United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7047

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B

PLS

JUDY C. EGELSTON,

Plaintiff-Appellant

-vs-

STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE PRESIDENT FOR ACADEMIC AFFAIRS, State University College at Geneseo; NICK LAGATTUTA, Dean of Educational Studies, State University College at Geneseo, Geneseo, New York

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

JOINT APPENDIX

Emmelyn Logan-Baldwin
510 Powers Building
Rochester, New York 14614
Attorney for Plaintiff-Appellant

Louis J. Lefkowitz
Attorney General for the State of New York
By Kenneth J. Connolly, Attorney
General's Office-Department of Law
Albany, New York 12223
Attorneys for Defendants-Appellees

UNITED STATES COURT OF APPEALS
FILED
APR 8 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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DATE 1975	NR.	PROCEEDINGS
Jan. 6		Filed complaint in Rochester.
6		" pltfs. notice to take deposition of Thomas Colahan on 2-3, 4,&5-75
6		" pltfs. notice to take deposition of Virginia Kemp on 1-30&31-75
6		" pltfs. notice to take deposition of Nick LaGattuta on 1-27,28 & 29-75
6		Issued summons and 5 copies of complaint & notices of depositions
6		JS 5 made
14		Filed Mar. ret. on S&C & deposition notices served on Robert W. MacVittie, Robert W. MacVittie, Thomas Colahan, Nick LaGattuta, and Any Asst. Atty. Gen. of N.Y. State at Roch. all served on 1-10-75
31		Filed Defts. motion to compel issuance of subpoena & to enlarge defts. time ret. 2-24-75
Feb. 18		Filed Pltfs. cross motion to compel service of answer; opposition to issuance of subpoena ret. 2-24-75
20		Filed Pltfs. notice of deposition of deft. Thomas Colahan on 3-5-75 and 3-7-75
20		Filed Pltfs. notice of deposition of deft., Nick LaGattuta on 2-25-75, 2-26-75 & 2-27-75
20		Filed Pltfs. notice to produce.
21		Filed Pltfs. supplemental affirmation in support of motion to compel service of answer; opposition to issuance of subpoena and to enlarge defts. time
24		Motion by Defts. to compel issuance of subpoena, etc. The Ct. directs that the subpoena will issue forthwith. Cross motion by Pltf. to compel answer. To be finally submitted 2 wks. from today.
25		Filed Pltf's. Supplemental Affirmation, etc.
Apr. 18		Filed Pltfs. notice of motion to compel discovery ret. 4-28-75
May 8		Filed Defts. affidavit in opposition to pltf.motion to compel discovery.
8		Filed defts. cross motion for an order dismissing the action ret. 5-12-75.
12		Filed Pltfs. supplemental affidavit in support of motion to compel discovery; affirmation in opposition to cross motion to dismiss.
12		Motion by Pltf. to compel discovery. Motion by Deft. to dismiss. To be submitted one month from today.
June 12 1975		Filed EEOC motion to participate as amicus curiae
Jan. 5		Filed decision & order granting defts., State Univ. College at Geneseo & State Univ. College of Arts and Sciences motion to dismiss, and the action against the individual defts. is dismissed-Burke, DJ Notice & copies to Emmelyn S. Logan-Baldwin and Louis J. Lefkowitz
5		Filed judgment on decision of the court.-Clerk Notice & copies to Emmelyn S. Logan-Baldwin and Louis J. Lefkowitz
5		JS 6 made
27		Filed Pltf's. Notice of Appeal (copy mailed to Mr. Lefkowitz, Albany and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Ms. Logan-Baldwin)

CLOSED

UNITED STATES DEPARTMENT OF JUSTICE

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PLAINTIFFS

EGELSTON, Judy C.
1362 West Lake Road
Conesus, New York 14435

DEFENDANTS

STATE UNIVERSITY COLLEGE AT GENESEO
STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, Division of Educational Studies State University College at Geneseo
COLAHAN, Thomas, Vice-President for Academic Affairs, State University College at Geneseo
LAGATTUTA, Nick, Dean of Educational Studies, State University College at Geneseo
Geneseo, New York

CAUSE Action to secure right to equal employment opportunities secured by 42 U.S.C. §2000 (a) et seq. U.S. Constitution, 14th Amendment, & 42 U.S.C. 1983

ATTORNEYS

melyn Logan-Baldwin, Atty.
510 Powers Building
Rochester, New York 14614
716-232-2292

Louis J. Lefkowitz, Esq.
Atty. General State of New York
The Capitol
Albany, New York 12224

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	1/6/75	#94851	#35 1/9/75	JS-5	
				JS-6	

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON
1362 West Lake Road
Conesus, New York 14435

Plaintiff

-v-

STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO, GENESEO, NEW YORK

Defendants

COMPLAINT

Civil Action

Number_____

JURISDICTION

1. This is an action for injunctive relief, declaratory judgment and money damages. The action arises under the Constitution of the United States, the Fourteenth Amendment to the United States Constitution; Title VII of the Act of Congress known as "the Civil Rights Act of 1964," as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. §. 2000(e) 5 (f); and under 42 U.S.C. §. 1983. The Court has jurisdiction over this action pursuant to 28 U.S.C. 1331, 1343, 2201 and 2202 and 42 U.S.C. § 2000 (e) 5 (f). The jurisdiction of this court is invoked to secure protection of and to redress deprivation of rights secured by (a) the Fourteenth Amendment to the United States

Constitution including the right to equal protection of the laws, (b) 42 U.S.C. § 1983, providing for the guarantee to all persons of all rights, privileges, and immunities secured by the Constitution and laws of the United States and (c) 42 U.S.C. §2000 (e) et seq., providing for injunctive and other relief against discrimination on the basis of sex in employment.

2. Charges of discrimination have been filed with the Equal Employment Opportunity Commission. The charges were properly deferred; more than one hundred and eighty (180) days have elapsed since the Equal Employment Opportunity Commission took jurisdiction over the charges. The United States Department of Justice has issued a Right to Sue Notice to the plaintiff, a copy of which is attached hereto and made a part hereof as Exhibit A. This action is brought by the plaintiff within ninety days of the receipt of that Right to Sue Notice on October 10, 1974.

PARTIES

3. Plaintiff JUDY C. EGELSTON is a private citizen who resides at 1362 West Lake Road, Conesus, New York. Plaintiff holds an Ed.D. degree in Science Education. Plaintiff was hired by The State University College at Geneseo in or about September, 1970, as an assistant professor in the Division of Educational Studies. She received notification of non-renewal of her contract on or about May 15, 1972 and terminated in June, 1973.

4. Upon information and belief, defendant State University College at Geneseo is an educational institution of The

State of New York, a part of the State of New York college and university system. Defendant State University College of Arts and Sciences, Division of Educational Studies is an administrative subdivision of The State University College at Geneseo. Defendant Thomas Colahan is the Vice-President for Academic Affairs of the State University College at Geneseo. Defendant Nick Lagattuta is the Dean of Educational Studies at the State University College at Geneseo. The defendants are employers within the meaning of Title VII of the Civil Rights Act of 1964.

STATEMENT OF CASE

5. This is a proceeding to enforce the rights of the plaintiff to equal employment opportunities. Plaintiff seeks reinstatement at The State University College at Geneseo, College of Arts and Sciences, Division of Educational Studies. Plaintiff seeks damages, back pay, and employee benefits by reason of the illegal acts of the defendants in refusing to renew her contract, solely on the basis of sex. Plaintiff seeks an injunction restraining the defendants from maintaining a practice, policy, custom or usage of:

a. Discriminating against the plaintiff and other females similarly situated because of sex with respect to compensation, terms, conditions, and privileges of employment and

b. Limiting, segregrating and classifying employees of defendants in ways which have deprived and do deprive the plaintiff and other females similarly situtated of employment opportunities and otherwise adversely affect their status as employees because of sex.

6. The defendants have consistently and purposefully limited and deprived their women employees, including plaintiff

of their rights guaranteed under the United States Constitution, federal law and New York State law with the intent and design, both directly and indirectly, of fostering and protecting the advantage and advancement of white male employees to the detriment of the female employees.

COUNT I

7. The defendants maintain a policy of discriminating against their female employees, including the plaintiff, by virtually excluding them from certain job classifications. Job classification determines the rate of pay an employee receives. Women employees customarily and uniformly have lower job classifications and lower rates of pay than male employees performing the same or similar duties or responsibilities and possessing the same skills.

8. Defendants maintain a policy, practice, custom and usage of discriminating against their female employees, including the plaintiff, by placing their female employees in the lowest classifications on pay scales while requiring and expecting that they perform work equivalent to those males employed in the highest pay scales and classifications. The women receive pay on the basis of the low salary scale and classification.

9. Defendants maintain a policy, practice, custom, and usage calculated to discriminate against female employees, including plaintiff, by a conscious practice of filling only certain jobs in their job classifications with women employees which they carefully recruit with the design to hire only those women who will work for substandard wages.

10. Defendants maintain a policy, practice, custom, and usage of recruitment for employment which is directed to seeking and hiring only the white male for the best-paying, career

oriented jobs, while seeking and hiring women, including plaintiff, for the low-paying, low-classified jobs.

11. Defendants maintain a policy, practice, custom and usage of excluding women, including plaintiff herein, from training programs to which men with the equivalent or less education and skills are enrolled either at the commencement of their employment or during certain stages of their employment. Men employees customarily finish training programs with job classifications not customarily granted their female counterparts.

12. Defendants maintain a policy, practice, custom, and usage of discriminating against their female employees and the plaintiff by classifying and assigning jobs for the white male employees as jobs which are career, supervisory, and management oriented while classifying jobs for women which are low-paying and without career, supervisory or management potential.

13. Defendants have discriminated and are discriminating against the plaintiff and other female employees by maintaining a policy, practice, custom and usage of promoting and transferring employees so that the white male employee is advanced to the highest paying, career oriented, supervisory or management position while the female employee is retained in the low-classified job which is not career, supervisory or management oriented.

14. Defendants have discriminated and are discriminating against the plaintiff and other female employees by maintaining a policy, practice, custom and usage of paying women employees of whatever job description, classification or job level less than white male counterparts when the education, skill and competence of the women employee equals or exceeds the education, skill and competence of the white male employee engaged in the same or similar work.

15. Defendants have discriminated and are discriminating against the plaintiff and their other female employees by maintaining a policy, practice, custom and usage of fostering an atmosphere in the employment situation which is calculated to harass, embarrass, humiliate and thereby cause the woman employee to "keep her place".

16. The defendants have discriminated and are discriminating against the plaintiff and other female employees by maintaining a policy, practice, custom and usage of attempting to intimidate and retaliating against females who complain of the illegal discriminatory acts of the defendants.

17. Plaintiff was hired by defendant college in or about September, 1970, as an assistant professor in the Division of Educational Studies. While plaintiff possessed at the time of hiring greater qualification and background for the position than a male, Patrick DeMarte, who was hired by the defendant college at the same time for a similar position, plaintiff was given the salary of $11,000 (Eleven thousand dollars) per year while the male, Patrick DeMarte, was offered a starting salary of $11,750 (Eleven thousand seven hundred and fifty dollars). Throughout plaintiff's employment with defendant college, she has, solely because she is female, been paid less than males who have the same or similar qualifications and experience and who perform the same or similar work.

18. In or about March, 1972, the Retention-Promotion-Tenure Committee of the defendant college recommended plaintiff Egelston for a two-year renewal of her contract. Defendant Colahan, acting on the advice of defendant Lagattuta recommended non-renewal of plaintiff's contract. Thereafter, defendants refused to state any reason for non-renewal of plaintiff's contract and refused to reconsider the non-renewal decision which was urged

by the Retention-Promotion-Tenure Committee.

19. Plaintiff received notification of non-renewal of her contract on or about May 15, 1972. At about that same time, plaintiff believes that the male hired at the same time she was hired, Patrick DeMarte, was notified of his contract renewal.

20. Plaintiff believes that the failure of the defendants to renew her contract after the strong recommendation by the Retention-Promotion-Tenure Committee for renewal on the basis of her performance was solely the result of the defendants' discriminating against her on the basis of sex. Plaintiff believes that such non-renewal by the defendants of her contract, solely on the basis of sex, is part of a pattern, practice, custom and usage of the defendants of discriminating against its female employees.

21. Subsequent to defendants' non-renewal of plaintiff's contract, defendants caused advertisements to be placed for an individual to fill the precise position which was then held by plaintiff.

22. When plaintiff, after her non-renewal, complained that the non-renewal was a part of a practice, pattern, custom and usage of the defendants' discriminating against its female employees, the defendants retaliated against her by refusing to honor her request to teach in the 1972 summer school sessions. Defendants only relented on their decision to bar plaintiff from teaching in the summer school sessions for 1972 after plaintiff had filed a retaliation complaint setting forth the denial of opportunity with the New York State Division of Human Rights and after defendants, according to plaintiff's information and belief, knew that plaintiff had committed herself to other summer employment.

23. Plaintiff believes that the defendants have further retaliated against her for complaining of the institution-wide employment discrimination practiced against her and others by the defendants' failure to renew the teaching contract of her husband, Richard L. Egelston, subsequent to the non-renewal of plaintiff's contract. Plaintiff believes that these acts of retaliation by the defendants are a part of the pattern, practice, custom and usage of the defendants to try to intimidate and to retaliate against persons who complain of the institution-wide employment discrimination practiced by the defendants.

24. Plaintiff believes that the defendants have further retaliated against her and her husband for her having complained of the illegal employment discrimination practiced by the defendants; the defendants, plaintiff believes, have instituted a "blackball" of her and her husband in the State University system which has had the effect of insuring that neither plaintiff nor her husband, Richard L. Egelston, can be employed in the State University system in New York. Plaintiff and Richard L. Egelston have applied for teaching jobs in the University system subsequent to their respective non-renewals by the defendants and, while each has had outstanding qualifications for the jobs to which they have applied, each has received arbitrary rejection of all applications.

25. Plaintiff, and other persons similarly situated, have no plain, adequate or complete remedy at law to redress the wrongs alledged herein. This suit for preliminary and permanent injunction is the only means of securing adequate relief. The plaintiff, and other persons similarly situated, are now suffering and will continue to suffer irreparable injury from the defendants' policies, practices, customs and usages set forth herein.

26. All the practices herein alleged are continuing up to the present time despite the efforts of the plaintiff having complained to the New York State Division of Human Rights and the Equal Employment Opportunity Commission.

27. By reason of the foregoing unlawful and discriminatory actions of the defendants, plaintiff has suffered damages.

COUNT II

28. Plaintiff realleges and incorporates herein all the allegations of paragraphs one through twenty-seven as though fully set forth.

29. The actions of the defendants to deprive the plaintiff and the class of persons she represents of equal employment opportunities by limiting, segregating and classifying the plaintiff and other persons similarly situated, so as to deprive them of equal employment opportunities and to refuse to grant the plaintiff and the class of persons she represents equal terms, privileges and conditions of employment, were taken by the defendants under color of law and in derogation of rights secured to the plaintiff and persons similarly situated by the Constitution of the United States and Acts of Congress, including without limitation, the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

30. As a direct consequence of the illegal and unconstitutional acts of the defendants, plaintiff and persons similarly situated have suffered and continue to suffer irreparable injuries. Plaintiff has been denied the basic right granted to each citizen - the right to work and the right to receive for that work pay commensurate to an individual's ability, education, skills

and experience. Plaintiff and persons similarly situated have been demeaned, humiliated and embarrassed by the defendants who have classified them discriminatorily. Plaintiff has been threatened and intimidated by the defendants for her taking steps to vindicate the constitutional and legal rights to equal employment opportunities, for example.

31. Unless this court grants the injunctive relief requested herein, plaintiff and persons similarly situated will continue to suffer loss of equal pay, non-discriminatory classification, ridicule, harassment, retaliation, etc. because of having taken steps to protect constitutional and legal rights. Further, absent the equitable relief requested herein, the defendants will succeed in their plan in enforcing their policy, practice, custom, and usage of blatant sex discrimination under color of law. Plaintiff has no adequate remedy at law.

32. All the practices herein alleged are continuing up to the present time despite the efforts of the plaintiff having complained to New York State Division of Human Rights and the Equal Employment Opportunity Commission.

33. By reason of the foregoing unlawful and discriminatory actions of the defendants, plaintiff has suffered damages.

PRAYER FOR RELIEF

34. WHEREFORE, the plaintiff respectfully prays that this Court advance this case on the docket, order a speedy hearing at the earliest possible date, cause this case to be in every way expedited and upon such hearing:

(1) Declare that defendants have discriminated and continue to discriminate against the plaintiff on the basis of

sex and in violation of federal, statutory and constitutional law.

(2) Grant the plaintiff a preliminary and permanent injunction enjoining the defendants, their agents, successors, employees, attorneys and those acting in concert with them and at their direction from continuing or maintaining any policy, practice, usage or custom of denying, abridging, withholding, conditioning, limiting or otherwise interfering with the rights of the plaintiff and their women employees to enjoy equal employment opportunities as secured by the United States Constitution and Title VII of the Civil Rights Act of 1964, as amended.

(3) Establish a mechanism for the enforcement of the injunction by requiring the defendants to present to the Court within thirty (30) days of the issuance of the injunction, a plan showing precisely and in detail how they will comply with the Court's order that they refrain from continuing their policies, practices, customs and usages of discrimination against the plaintiff and their women employees on account of their sex as to compensation, terms, conditions and privileges of employment; and pursuant thereto that the Court order that plaintiff and every woman with an employment contract with the defendants be paid wages or salary equivalent to that which she would have been receiving had she been male.

(4) Direct that plaintiff Egelston be reinstated to the position in the Department of Educational Studies at such pay and rank to which she would have been entitled had she been male.

(5) Award plaintiff Egelston back pay, benefits, and seniority status to which she would have been entitled, absent the illegal acts of the defendants alleged herein. The difference

between the wages she actually earned and the wages she would have earned should be computed from the latter of her dates of employment by the defendants or the date on which the Civil Rights Act of 1964 took effect.

(6) Grant plaintiff Egelston an injunction enjoining the defendants, their agents, successors, employees, attorneys, and those acting in concert with them and at their direction from conditioning, limiting and depriving plaintiff Egelston from opportunities for promotion because of sex.

(7) Direct that plaintiff Egelston be promoted immediately to the classification that she has been denied by reason of her sex with seniority in such classification dating from the first instance of wrongful failure to place her in such classification.

(8) Direct that defendants publish verbatim the findings and decisions herein on all school bulletin boards and in all internal school publications.

(9) Award the palintiff compensatory damages of $2,000,000.00 (Two million dollars.)

(10) Allow the plaintiff the costs of the action, including reasonable attorney's fees.

(11) Award plaintiff damages by way of example against the defendants in an amount commensurate with the wrong and the defendants' ability to pay.

(12) Grant such other and further relief as may appear to this Court just and proper.

Respectfully submitted

EMMELYN LOGAN-BALDWIN
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Telephone: 716-232-2292

January 6, 1975

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number
JSP:DLB:sc:mal
DJ 169-017-53

OCT 4 1974

REGISTERED MAIL

Ms. Judy C. Egelston
1362 West Lake Rd.
Conesus, New York 14455

Re: EEOC Charge Against State University of New York, Geneseo
No. TBU 4-0751

Dear Ms. Egelston:

Because you have filed a charge against the respondent named above and more than 180 days have elapsed since the Equal Employment Opportunity Commission assumed jurisdiction over that charge, and no suit based on that charge has been filed by this Department, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., against the above named respondent.

The civil action must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

If you are unable to retain an attorney, the court is authorized in its discretion to appoint an attorney to represent you and to authorize commencement of the suit without payment of fees, costs, or security. In order to apply for an appointed attorney,

EXHIBIT A

BEST COPY AVAILABLE

you may take this Notice, along with any correspondence you have received from the Department of Justice or the Equal Employment Opportunity Commission, to the Clerk of the United States District Court in Syracuse.

Your attorney may arrange with EEOC to inspect the investigative file pertaining to your case. That file is located in the EEOC District Office, at the address below.

We request that you send this Department a copy of any complaint initiating suit.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By:

DANIEL L. BELL, II
Attorney
Education Section

cc: Mr. Lloyd Bell
Director
EEOC District Office
1 West Genesee St.
Buffalo, New York 14202

Emelyn Logan Baldwin
Attorney & Counselor at Law
510 Powers Building
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON 1362 West Lake Road Conesus, New York 14435, Plaintiff, -against- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO, THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO, GENESEO, NEW YORK, Defendants.	CIVIL ACTION FILE NO. CIV 75-9

MOTION TO COMPEL ISSUANCE OF SUBPOENA AND TO ENLARGE DEFENDANTS' TIME

Defendants move the Court pursuant to Federal Rules of Civil Procedure, Rules 45 and 6(b) for the following relief:

1. Directing the Clerk of the Court to issue a subpoena commanding the United States Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York to produce all material contained in a file entitled "Judy C. Egelston v. State University of New York, Geneseo, Charge No. TBU4-0761."

2. Enlarging defendants time to answer or move against the complaint until the expiration of 20 days

after defendants have completed inspection of the above mentioned file.

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Attorney for Defendants
The Capitol
Albany, New York 12224

By:

s/Kenneth J. Connolly
KENNETH J. CONNOLLY
Principal Attorney
Telephone: (518) GR 4-3340

NOTICE OF MOTION

TO: EMMELYN LOGAN-BALDWIN
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614

PLEASE TAKE NOTICE, that the undersigned will bring the above motion on for a hearing before this Court at the United States Courthouse, Rochester, New York, on the 24th day of February, 1975 at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Attorney for Defendants
The Capitol
Albany, New York 12224

By:

s/Kenneth J. Connolly
KENNETH J. CONNOLLY
Principal Attorney
Telephone: (518) GR 4-3340

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

20

JUDY C. EGELSTON
1362 West Lake Road
Conesus, New York 14435,

Plaintiff,

-against-

STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO, GENESEO, NEW YORK,

Defendants.

AFFIDAVIT

CIVIL ACTION FILE NO. CIV 75-9

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

KENNETH J. CONNOLLY, being duly sworn, says:

1. I am a Principal Attorney on the staff of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for defendants. I am assigned to the defense of this action and I am fully familiar with the facts and circumstances herein. This affidavit is made in support of defendants' motion for an order (1) directing the Clerk of this Court to issue a subpoena commanding the United States Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York to produce all material contained in a file entitled "Judy C. Egelston v. State University of New York, Geneseo, Charge No. TBU4-0761", and (2) enlarging defendants' time to answer or move against the complaint until 20 days after defendants have completed the inspection of the above mentioned file.

2. The complaint alleges (paragraph 1) that this Court has jurisdiction over this action under 28 U. S. C. §§ 1331, 1343, 2201 and 2202 and 42 U. S. C. § 2000e-5(f). The action seeks a judgment declaring, among other things, that defendants have discriminated against plaintiff because of sex. In addition, the action seeks money damages and injunctive relief.

3. The complaint further alleges (paragraph 2) that plaintiff filed charges of discrimination with the Equal Employment Opportunity Commission (hereinafter referred to as EEOC) and that the EEOC has deferred the charges. The charges of discrimination were presumably filed with the EEOC pursuant to the provisions of 42 U. S. C. § 2000e-5.

4. 42 U. S. C. § 2000e-5(b) provides, in part:

> "(b) whenever a charge is filed by ... a person claiming to be aggrieved ... alleging that an employer ... has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer ... within ten days ...." (emphasis added.)

5. 42 U. S. C. § 2000e-5(e) provides, in part:

> "(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter ...." (emphasis added.)

6. 42 U. S. C. § 2000e-5(f)(1) further provides, in part:

> "(f)(1) ... If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice ...." (emphasis added.)

7. I have been advised by representatives of the State University of New York that the notice of the charges filed by plaintiff was never served upon the State University College of Arts and Sciences at Geneseo. Therefore, defendants are unable to determine the discriminatory practices allegedly practiced by defendants against plaintiff.

8. Upon information and belief, on June 25, 1974 the EEOC made a determination that plaintiff's complaint was not timely filed and that EEOC, therefore, had no jurisdiction over plaintiff's complaint. Upon information and belief, defendants were never served with a copy of this determination.

9. On or about June 25, 1974 plaintiff was served with a "Notice of Right to Sue" by EEOC, Buffalo District Office. A copy of this notice was received by State University College at Geneseo on or about July 1, 1974.

10. Upon information and belief, on or about August 8, 1974, EEOC reversed its previous determination and assumed jurisdiction over plaintiff's complaint. Notice of EEOC's new determination was received by State University College at Geneseo on August 12, 1974.

11. It is well settled law that full compliance with the time limitations contained in 42 U. S. C. § 2000e-5 is a condition precedent to the commencement of an action. It is also well settled law that failure of a plaintiff to comply with this condition precedent deprives this Court of jurisdiction.

12. Plaintiff was required, therefore, to (a) file a complaint within 180 days of the alleged discrimination, and (b) commence this action within 90 days of receipt of the "Notice of Right to Sue". Defendants are unable to determine, at this time, whether plaintiff has met these requirements since this information is contained in EEOC Charge No. TBU4-0761 which is presently unavailable to defendants.

13. Defendants are, therefore, unable to properly proceed in this action and must be afforded an opportunity to examine the EEOC file in order to properly defend this litigation. Fundamental fairness should dictate that defendants be allowed to obtain this information prior to answering or moving against the complaint. Without this information defendants believe that they are being deprived of a substantial right.

14. This application is addressed to the Court's discretion and defendants submit that the granting of this motion will aid in framing the issues and will thereby benefit the Court in the ultimate disposition of the issues. Defendants respectfully request therefore that this Court issue an order pursuant to Federal Rules of Civil Procedure rule 45, 28 U. S. C. (1) directing the Clerk of this Court to issue a subpoena commanding the United States Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York, to produce all material contained in a file entitled "Judy C. Egelston v. State University of New York, Geneseo, Charge No. TBU4-0761", and pursuant to Federal Rules of Civil Procedure rule 6(b), 28 U. S. C., (2) enlarging defendants' time to answer or move against the complaint until the expiration of 20 days after defendants have completed the inspection of the above mentioned file.

Sworn to before me this
29th day of January, 1975.

s/ Thomas Neal Sautoro
Notary Public

s/ Kenneth J. Connolly
KENNETH J. CONNOLLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

25

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants	CROSS MOTION TO COMPEL SERVICE OF ANSWER; OPPOSITION TO ISSUANCE OF SUBPOENA CIVIL ACTION NO. 75-9

PLEASE TAKE NOTICE that upon the annexed affirmation of Emmelyn Logan-Baldwin, dated February 17, 1975, and upon all the papers and proceedings heretofore had herein, the plaintiff will move that a motion term of this court of February 24, 1975, at the Federal Building, State Street, Rochester, New York, at 10 a.m. or as soon thereafter as counsel can be heard for an order of the court directing the service of the defendants' answer herein without further delay and for such other and further relief as to the court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that upon the same papers and at the same time, date, and place, plaintiffs will oppose defendants' Motion to Compel Issuance of Subpoena and to Enlarge Defendants' Time.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel: 716-232-2292

February 17, 1975

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO, Defendants	AFFIRMATION IN SUPPORT OF MOTION TO COMPEL SERVICE OF ANSWER; OPPOSITION TO ISSUANCE OF SUBPOENA AND TO ENLARGE DEFENDANTS' TIME CIVIL ACTION NO. 75 - 9

Emmelyn Logan-Baldwin under penalties of perjury, affirms the following:

1. I am an attorney at law, duly licenced to practice my profession in the State of New York. I am duly admitted to the bar of this court. I am the attorney for the plaintiff. I am familiar with the pleadings and proceedings in this lawsuit. This affirmation is submitted in support of plaintiff's cross motion to compel the service of the answer herein by the defendants without further delay; it is submitted by the plaintiff in opposition to defendants' motion for the issuance of a subpoena to examine the Equal Employment Opportunity Commission file in this case and in opposition to defendants' motion that it be given an extension of time in which to answer the complaint until after it has examined the Equal Employment Opportunity Commission file in this case.

2. This is an action for injunctive relief, declaratory judgment and money damages to redress acts of discrimination in employment on the basis of sex. The action arises under the Constitution of the United States, the Fourteenth Amendment to the

United States Constitution; Title VII of Civl Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, 42 U.S.C. §2000(e)5(f) and under 42 U.S.C. §1983.

3. The court has jurisdiction over this action pursuant to 28 U.S.C. 1331, 1343, 2201 and 2202 and 42 U.S.C. §2000(e)5(f).

4. Plaintiff's cross motion to compel the service of the answer by the defendants without further delay should be granted Defendants' motion for an extension of time in which to answer until it has examined the Equal Employment Opportunity Commission file in this case should be denied. Whatever arguments the defendants advance, and those arguments are without basis as hereafter outlined in detail, against jurisdiction of the court pursuant to Title VII of the Civil Rights Act of 1964, there is no reason to delay defendants' answer. This court has independent jurisdictional basis of plaintiff's claims since the defendants are an agency of the State of New York and/or agents and employees of an agency of the State of New York.

5. It is elemental that a state entity or agents and/or employees of the state entity cannot under the Constitution or federal statute deny any person equal protection of the laws nor deprive any person of any right, privilege or immunity secured by the Constitution or federal law. One who has been denied constitutional or statutory rights, as the plaintiff herein alleges, can sue in federal court for redress of the denial of those rights, as plaintiff herein does.

6. Nor is there any basis for defendants' request to delay answering until the court has issued a subpoena for the production of the Equal Employment Opportunity Commission file on this case and until the defendants have examined that file. The file of the Equal Employment Opportunity Commission on this case is a public record. It is as available to attorneys for the defendants as it is available to the attorney for the plaintiff.

7. There is, therefore, no basis whatsoever for the request that this court ought issue a subpoena to examine the Equal Employment Opportunity Commission file. The State of New York, Office of the Attorney General, employs an enormous staff of lawyers not only in Albany, New York, but in offices in cities around the state. I know there is one such office in Rochester, New York, and I would suspect that there is a similar office in Buffalo, New York - the location of the regional office of the Equal Employment Opportunity Commission and the file on this case. An assistant Attorney General of the State of New York can proceed just as easily to Buffalo, New York as attorney for plaintiff to examine the file.

8. Further, there is no basis in fact or law for defendants' claim that the independent jurisdictional basis of plaintiff's claims under Title VII of the Civil Rights Act of 1964 are incomplete because of inaction on the part of the Equal Employment Opportunity Commission. Plaintiff first filed her claim of employment discrimination with the federal government by notifying the Office of Contract Compliance on January 24, 1973. Defendants had notice of plaintiff's employment discrimination claims against them at least by June 25, 1974 when Lloyd G. Bell, District Director, Equal Employment Opportunity Commission, incorrectly issued a Notice of

Right to Sue to plaintiff noting "no jurisdiction" and sent a copy of that notice to defendant, State University of New York, Geneseo. A copy of this Notice of Right to Sue is attached hereto and made part hereof as Exhibit A.

9. The defendants had further notice of plaintiff's charge filed with the federal government by the letter of Kenneth M. Davidson, District Counsel, Equal Employment Opportunity Commission, August 8, 1974, noting the previous error of the Commission with respect to jurisdiction. (A copy of this letter is attached hereto and made a part hereof of Exhibit B.) I was also personally informed by Mr. Davidson that the Notice of Right to Sue had been incorrectly issued on June 25, 1974 - that pursuant to Title VII of the Civil Rights Act of 1964 when a governmental entity is the defendant, such as the defendants in this case, the Right to Sue Notice must be issued by the Department of Justice.

10. Thereafter, Right to Sue Notice, Exhibit A of the complaint, was issued by the Department of Justice under the signature of the Assistant Attorney General of the Civil Rights Division. As required by law, plaintiff duly brought this lawsuit within 90 days of receiving the Right to Sue Notice. Having had notice of plaintiff's claims against them since at least on or about June 25, 1975, defendants cannot now claim that they "...are unable to determine the discriminatory practices allegedly practiced by defendants against plaintiff". Attorneys for defendants, as previously noted, can read the complaint that plaintiff filed with the Equal Employment Opportunity Commission by simply examining the file on the case, a matter of public record.

11. Defendants suggest in their attorney affidavit dated January 29, 1975, ¶12, that plaintiff is required to (a) file a complaint within 180 days of the alleged discrimination and (b) commence this action within 90 days of receipt of the Notice of Right to Sue. Plaintiff has fulfilled these requirements. The Equal Employment Opportunity Commission, the federal agency established to enforce Title VII of the Civil Rights Act of 1964, has determined that the charge was timely filed with it and has notified the defendants. This lawsuit was commenced within 90 days of the receipt of the Notice of Right to Sue issued, pursuant to Title VII, by the Attorney General of the United States.

12. Defendants would seem to allude in their papers to some argument that plaintiff's lawsuit is premature because of some particular notice that the Equal Employment Opportunity Commission did not send to the defendants. However, it is well settled that procedural requirements of Title VII of the Civil Rights Act of 1964, are directory, not mandatory. Thus, notice by the Commission sent a defendant after the statutory time period is effective notice.

13. Further, it is well settled that, regardless of the action or inaction by the Equal Employment Opportunity Commission with respect to the handling of a duly filed complaint, a plaintiff in a civil action pursuant to Title VII of the Civil Rights Act of 1964 is not to be penalized.

14. Courts have uniformly held that service of a charge of discrimination on an employer is not a jurisdictural prerequisite to a private party bringing a Title VII lawsuit. The legislative history of the 1972 amendments to Title VII confirms that Congress intended that a private party be allowed to proceed with private litigation, as before, not withstanding that Congress gave

the Equal Employment Opportunity Commission additional investigatory powers under the amendments. Thus, a private party may initiate a lawsuit in federal court 180 days after filing a complaint of discrimination with the Equal Employment Opportunity Commission notwithstanding that the Commission has done nothing whatsoever with respect to that charge.

For these reasons, plaintiff respectfully requests that the court grant her cross motion to compel the service of the answer herein by the defendants without further delay and that the Court deny defendants' motion for extension of time to answer until after they have examined the file of the Equal Employment Opportunity Commission and that the court further deny defendants' request that the court issue a subpoena to examine the file of the Equal Employment Opportunity Commission.

EMMELYN LOGAN-BALDWIN

February 17, 1975

Rochester, New York

Exhibit A

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE

Judy C. Egelston 1362 West Lake Road Conesus, New York 14435	FROM: U.S. Equal Employment Opportunity Commission Buffalo District Office 1 West Genesee Street Buffalo, New York 14202

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:	EEOC REPRESENTATIVE	
☐ NO REASONABLE CAUSE ☐ UNTIMELY CHARGE	Lloyd G. Bell	
☒ NO JURISDICTION ☐ FAILURE TO PROCEED	TELEPHONE NUMBER (716) 842-5170	CASE/CHARGE NUMBER TBU4 0761

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

Maurice A. Lawrence for

LLOYD G. BELL
District Director

cc: State University of New York, Geneseo

EEOC FORM APR 73 161 CHARGING PARTY'S COPY

Exhibit B

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1 WEST GENESEE STREET
BUFFALO, NEW YORK 14202
(716) 842 - 5170

August 8, 1974

Dr. Judy C. Egelston
1362 West Lake Road
Conesus, New York 14435

RE: Judy C. Egelston v. State University of New York, Geneseo
Charge No. TBU 4-0761

Dear Dr. Egelston:

The determination issued on June 25, 1974, that your charge was not filed within the time limits required by §706(e) of the Civil Rights Act of 1964 (as amended) has been altered. Pursuant to EEOC Dec. No. 71-1115, the charge you filed with the Office of Contract Compliance on January 24, 1973 is deemed to have been filed with the Equal Employment Opportunity Commission, and therefore was filed within the time limits prescribed by Title VII.

Sincerely yours,

Kenneth M. Davidson
DISTRICT COUNSEL

cc: SUNY, Geneseo
Emmelyn Logan-Baldwin

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Cross Motion to Compel Service of Answer; Opposition to Issuance of Subpoena and to Enlarge Defendants' Time was served on the defendants by my causing a copy to be delivered to the Offices of the Attorney General of the State of New York, 300 Terminal Building Rochester, New York this 18th day of February, 1975 with courtesy copies mailed to Kenneth J. Connolly, Esquire, Offices of the Attorney General, State of New York, The Capitol, Albany, New York, 12224 and Kenneth M. Davidson, Esquire, District Counsel, Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York, 14202 this 17th day of February, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel. 716-232-2292

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON Plaintiff, -v- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants.	SUPPLEMENTAL AFFIRMATION IN SUPPORT OF MOTION TO COMPEL SERVICE OF ANSWER; OPPOSITION TO ISSUANCE OF SUBPOENA AND TO ENLARGE DEFENDANTS' TIME CIVIL ACTION NO. 75 - 9

Emmelyn Logan-Baldwin, under penalties of perjury, affirms the following:

1. I am an attorney at law, duly licensed to practice my profession in the State of New York. I am duly admitted to the bar of this court. I am the attorney for the plaintiff. I am familar with the pleadings and proceedings in this lawsuit. This affirmation is submitted in further support of plaintiff's cross motion to compel the service of the answer herein by the defendants without further delay; it is submitted by the plaintiff in opposition to defendants' motion for the issuance of a subpoena to examine the Equal Employment Opportunity Commission file in this case and in opposition to defendants' motion that it be given an extension of time in which to answer the complaint until after it has examined the Equal Employment Opportunity Commission file in this case.

2. On February 18, 1975, I called at the offices of the Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York to examine the Commission file on the complaint of Judy C. Egelston. At that time, Kenneth M. Davidson, Esquire,

District Counsel, Equal Employment Opportunity Commission, told me that he had personally talked with attorneys for the defendants in this case and advised that there is no need for a subpoena to examine the Commission file on this case, that an attorney for the defendants just like myself, as attorney for plaintiffs, can review the file.

3. Outside of transmittal letters and the original of the particulars of complainant's complaint, the file contains no information other than that which the defendants already admit having received copies. Particulars of the complaint filed with the Equal Employment Opportunity Commission are the same in substance as the claims plaintiff makes in this lawsuit.

Emmelyn Logan-Baldwin

February 19, 1975
Rochester, New York

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Affiramtion in Support of Motion to Compel Service of Answer; Opposition to Issuance of Subpoena and to Enlarge Defendants' Time was served on the defendants by my client causing a copy to be delivered to the Offices of the Attorney General for the State of New York, 300 Terminal Building, Rochester, New York, this 20th day of February, 1975 with courtesy copies mailed to Kenneth J. Connolly, Esquire, Offices of the Attorney General, State of New York, The Capitol, Albany, New York, 12224 and Kenneth M. Davidson, Esquire, District Counsel, Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York, 14202 this 19th day of February 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel: 716-232-2292

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEO: STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants	SUPPLEMENTAL AFFIRMATION IN SUPPORT OF MOTION TO COMPEL SERVICE OF ANSWER; OPPOSITION TO ISSUANCE OF SUBPOENA AND TO ENLARGE DEFENDANTS' TIME CIVIL ACTION NO. 75 - 9

Emmelyn Logan-Baldwin, under penalties of perjury, affirms the following:

1. I am an attorney at law, duly licensed to practice my profession in the State of New York. I am duly admitted to the bar of this court. I am the attorney for the plaintiff. This affirmation is submitted in further support of plaintiff's cross motion to compel the service of the answer herein by the defendants without further delay; it is submitted by the plaintiff in opposition to defendants' motion for the issuance of the subpoena to examine the Equal Employment Opportunity Commission file in this case and in opposition to defendants' motion that they be be given an extension of time in which to answer complaint until after they have examined the Equal Employment Opportunity Commission file.

2. At oral argument of this motion on February 24, 1975, the defendants, by their counsel conceded that there is no basis, as plaintiff has alleged, for the issuance of the subpoena to examine the file of the Equal Employment Opportunity Commission. That file is a public record and is available to attorneys for the defendants as well as to the plaintiff.

3. Wholly without any notice to the plaintiff, defendants at oral argument attempted to change their request for subpoena to refer to the complaint filed by the plaintiff with the Office of Federal Contract Compliance. Plaintiff submits that there is no basis for such oral amendment of motion, without notice and that the subpoena issued by the court for the complaint be quashed.

4. Counsel for defendants represented to the court at oral argument that the basis for the surprise request for subpoena of the complaint filed with the Office of Federal Contract Compliance was information that the defendants gained in reviewing the Equal Employment Opportunity Commission file. Reference was made to a letter of August 8, 1974 to plaintiff Egelston from the Commission. However, the defendants have had knowledge of this letter since on or about August 8, 1974 when the letter was mailed by the Commission to plaintiff Egelston, with a copy being sent to the defendant college. The defendants admit to receiving a copy of this letter in their papers herein; a copy of this letter is Exhibit B of the Affirmation in Support of Motion to Compel Service of Answer, Opposition to Issuance of Subpoena and to Enlarge Defendants' Time, February 17, 1975.

5. There is simply no basis for any delay inthe submission of defendants' answer. Plaintiff has met all the jurisdictional

prerequisites for the filing of this lawsuit. The charge of discrimination was filed with the Equal Employment Opportunity Commission within 300 days and the plaintiff has brought this lawsuit within 90 days of her receipt of the Right to Sue Notice.

6. Defendants alluded in their papers herein to a requirement of filing a charge with the Commission within a 180 days of the incident. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e - 5(e) provides that, when there is a state deferral agency as in this case with the New York State Division of Human Rights, the charge is to be filed with the Commission "...within three hundred days after the alleged unlawful employment practice occured, or within 30 days after receiving notice that the State or local agency has terminated the proceedings under the State or local law..."

7. In fact, the filing of plaintiff's charges with the Equal Employment Opportunity Commission is documented as well in her filing of her claims of discrimination with the New York State Division of Human Rights, on or about February 9, 1973. In filing plaintiff Egelston noted her interest in pursuing her claims with the Equal Employment Opportunity Commission. By agreement between the Equal Employment Opportunity Commisssion and the New York State Division of Human Rights, the Division is a filing office for the Commission under such circumstances.

8. There is absolutely no basis for defendants' suggestion that they need to read any file any further to be apprised of the substance of plaintiff's claims. After the filing of the complaint with the New York State Division of Human Rights on or about February

9, 1973, both plaintiff and the defendants participated in the investigatory conferences with representatives of the New York State Division of Human Rights. The defendants had full opportunity to respond to plaintiff's allegations in her complaint as well as those allegations in an amendment to the complaint filed on or about April 3, 1973 and charging retaliation.

9. After full opportunity for the defendants to be heard by the Division, the Division found "probable cause" to believe discrimination has and is being practiced by the defendants as plaintiff Egelston alleges. The determination is dated February 25, 1974.

10. Thereafter, on March 1, 1974, the defendants asked the New York State Division of Human Rights to reopen its determination and submitted further, lengthly papers. The Division rejected that reopening by order of July 19, 1974 and directed that the case proceed to public hearing.

11. As previously noted, the Equal Employment Opportunity Commission has mailed copies of communications with the plaintiff to the defendants. The file of the Commission has always been open to the defendants. Counsel for plaintiff has offered to give counsel for defendants a copy of the complaint letter which was sent to the Office of Federal Contract Compliance. The defendants have been duly served with a comprehensive complaint in this lawsuit outlining plaintiff's claims.

12. In summary, plaintiff has fulfilled all requirements in law to bringing of this lawsuit. There is no reason infact or law for the defendants to delay in answering the complaint.

February 25, 1975
Rochester, New York

Emmelyn Logan-Baldwin

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Supplemental Affirmation in Support of Motion to Compel Service of Answer; Opposition to Issuance of Subpoena and to Enlarge Defendants' Time was served on the defendants by my causing a copy to be delivered to the Offices of the Attorney General in the State of New York, 300 Terminal Building, Rochester, New York, this 25th day of February 1975 with courtesy copies mailed to Kenneth J. Connolly, Esquire, Offices of the Attorney General, State of New York, The Capitol Albany, New York, 12224 and Kenneth M. Davidson, Esquire, District Counsel, Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York 14202 this 25th day of February, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tele: 716-232-2292

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LACATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants	NOTICE OF DEPOSITION CIVIL ACTION NO. 75 - 9

PLEASE TAKE NOTICE that the plaintiff will take the deposition upon oral examination of the defendant Thomas Colahan, whose address is c/o State University College at Geneseo, Geneseo, New York, pursuant to the Federal Rules of Civil Procedure, before a notary public or some other officer duly authorized to administer oaths on March 5 and 7, 1975 between the hours of 10:00 a.m. and 12:00 noon and 2:00 p.m. and 5:00 p.m. on each day at 510 Powers Building, Rochester, New York, 14614.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel: 716-232-2292

February 18, 1975

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Deposition was served on the defendants by my causing a copy thereof to be delivered to the offices of the Attorney General of the State of New York, 300 Terminal Building, Rochester, New York this 18th day of February, 1975 and my causing a courtesy copy to be mailed to Kenneth J. Connolly, Esquire, Office of the Attorney General, State of New York, The Capitol, Albany, New York, 12224 and to Kenneth M. Davidson, Esquire, District Counsel, Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York, 14202 this 18th day of February, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel: 716-232-2292

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants	NOTICE OF DEPOSITION CIVIL ACTION NO. 75 - 9

PLEASE TAKE NOTICE that the plaintiff will take the deposition upon oral examination of the defendant Nick LaGattuta, whose address is c/o State University College at Geneseo, Geneseo, New York, pursuant to the Federal Rules of Civil Procedure, before a notary public or some other officer duly authorized to administer oaths on February 25, 26, and 27, 1975 between the hours of 10:00 a.m. and 12:00 noon and 2:00 p.m. and 5:00 p.m. on each day at 510 Powers Building, Rochester, New York, 14614.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel: 716-232-2292

February 18, 1975

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Deposition was served on the defendants by my causing a copy thereof to be delivered to the offices of the Attorney General of the State of New York, 300 Terminal Building, Rochester, New York this 18th day of February, 1975 and my causing a courtesy copy to be mailed to Kenneth J. Connolly, Esquire, Office of the Attorney General, State of New York, The Capitol, Albany, New York, 12224 and to Kenneth M. Davidson, Esquire, District Counsel, Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York, 14202 this 18th day of February, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel: 716-232-2292

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants	NOTICE TO PRODUCE CIVIL ACTION NO. 75 - 9

Pursuant to the Federal Rule of Civil Procedure 34(b) the defendants are required to produce for copying and inspection at the offices of Emmelyn Logan-Baldwin, Esquire, Attorney for Plaintiff, 510 Powers Building, Rochester, New York, 14614 on March 20 and 21, 1975 between the hours of 9:15 a.m. and 12:00 noon and 1:15 p.m. and 5:00 p.m. on each day the following documents:

(1) Entire personnel records of Judy C. Egelston, Patrick DeMarte, Gilbert Slote, Ramon Rocha, Richard Egelston.

(2) The document and/or documents constituting the affirmative action program of the State University College at Geneseo from 1965 to date and all documents constituting background data, supporting data and/or studies made by the defendants in connection with same from 1965 to date.

(3) The document and/or documents showing the name, sex, classification, pay rate, salary, advancement experience, prior experience, educational background and length of service for the following: All persons employed by defendants in the Division of Educational Studies from 1965 to date;

All persons holding Committee chairs within the Division of Educational Studies from 1965 to date;

All persons employed in the Holcomb Campus School, 1965 to date;

All persons employed in the State University College at Geneseo Milne Library, 1965 to date.

(4) The document and/or documents of the defendants showing the recommendations of the Promotion - Tenure - Retention Committee of the Division of Educational Studies for renewal and non-renewal of contracts, 1965 to date; the document and/or documents showing the rejections and acceptances of those recommendations by the defendants, from 1965 to date.

(5) All documents of whatever description, notes memoranda, letters, etc., in connection with the decision of defendants not to renew the teaching contract of Dr. Judy C. Egelston in April of 1972 in spite of the recommendation of her department that she be renewed and all writings of any nature

whatsoever in connection with the consideration by the Promotion-Tenure-Retention Committee of the renewal of Dr. Judy C. Egelston's contract in Spring, 1972.

(6) Job description and/or descriptions for all positions in the Division of Educational Studies at State University College at Geneseo, 1965 to date.

(7) Pay scales for all positions in State University College at Geneseo, Division of Educational Studies, 1965 to date.

(8) The document and/or documents showing the methods of appointment, qualifications for appointment and job responsibilities of committee chairpersons within the Division of Educational Studies, 1965 to date.

(9) The document and/or documents of the defendants constituting the policy of the State University College at Geneseo of not hiring non-renewed faculty persons for summer school sessions, 1965 to date.

(10) The document and/or documents stating the policy of the State University College at Geneseo which prefers persons holding doctorates to teach summer school.

(11) The advertisement which the State University College at Geneseo caused to be published in the "American Association of Colleges for Teacher Education" for the position of Science Education Instructor in the Division of Educational Studies in the Spring of 1972.

(12) The document and/or documents constituting responses of applicants and the defendants' response to applicants

for the job of Science Education instructor in the Division of Educational Studies, pursuant to advertisement of Spring of 1972.

(13) The document and/or documents constituting all notes, letters, memoranda, etc., by which the defendants offered and/or considered offering Dr. Judy C. Egelston a teaching job in the Summer session at State University College at Geneseo in the Summer of 1972.

(14) The document and/or documents constituting the "additional broader considerations" which were considered by the defendants in reaching the determination of non-renewal of Dr. Judy C. Egelston's contract.

(15) The document and/or documents constituting evidence of "changing enrollment patterns, discipline changes, economic resources and the maintenance of high professional standards" of the defendants which have been suggested as factors leading to respondents' decision for the non-renewal of Dr. Judy C. Egelston's contract.

(16) The document and/or documents constituting policy changes in the Division of Educational Studies which were under consideration at the time of non-renewal of Dr. Judy C. Egelston's contract and which were a factor in the non-renewal of Dr. Judy C. Egelston's contract.

(17) The document and/or documents constituting all writings of any nature whatsoever in connection with defendants' non-renewal of the contract of Dr. Judy C. Egelston's husband, Richard Egelston.

(18) The document and/or documents constituting the criteria for evaluation of professors in connection with review for renewal/non-renewal of contracts.

(19) The "new New York State Education Department guide-line concerning teacher education curriculum which radically changed the mode of certification for teachers" and which had reduced the need for science education professors, at the time of non-renewal of Dr. Egelston's contract, referred to in defendants' memorandum of March 1, 1974 to the New York State Division of Human Rights.

(20) The document and/or documents constituting all writings of any nature whatsoever surrounding the notice of the State University College at Geneseo to terminate Patrick DeMarte in the fall of 1970.

(21) All student evaluation print-outs rating Dr. Judy C. Egelston during her employment by the defendants, as well as such prints-outs rating all other employees of the Division of Educational Studies during the same period.

(22) Letter of August 8, 1972 from T. Colahan to N. LaGattuta regarding the award of discretionary increases to employees in the Division of Educational Studies.

(23) The document and/or documents constituting the written policy of the State University College at Geneseo for reimbursement of expenses of employees at attendance at professional conferences in which the employee is participating, 1965 to date.

(24) All writings of any nature whatsoever generated by the State University College at Geneseo Affirmative Action Committee.

(25) Memorandum from Dr. N.J. Bauer to Tom Colahan, June 11., 1973, re: termination of Dr. Judy C. Egelston.

(26) The Request for Travel Funds of Judy C. Egelston to conference, Association for the Education of Teachers

of Science, Toronto, Ontario, Canada, Spring, 1973.

(27) Memorandum from Thomas S. Colahan to Dr. J. Pratt Krull, Jr., August 8, 1972 - re: discretionary salary increases, 1972 - 1973.

(28) The document and/or documents showing the purpose of Holcomb School, Geneseo, New York, description of programs, the background and qualifications of personnel employed.

(29) The Register - June 6, 1972.

(30) Faculty list of defendant College as of September 15, 1972.

(31) Trustee policies of defendant College - 1972.

(32) Senate Professional Association agreement - 1972-1973 academic year.

(33) The document and/or documents constituting written statements made by students of Dr. Judy C. Egelston concerning Dr. Egelston's performance as a teacher.

(34) The document and/or documents constituting the entire working papers of the Promotion - Tenure - Retention Committee of the Division of Educational Studies of defendant school for the 1972-1973 academic year.

(35) The document and/or documents constituting the statistics on employment of females at defendant College presented during the "educational marathon" held at defendant College, Nov., 14, 1972.

(36) Any recording and/or tape of the "educational marathon" at defendant College, Tuesday, November 14, 1972.

(37) The document and/or documents constituting Phase I Equal Employment Opportunity Plan of State University of New York.

BEST COPY AVAILABLE

(38) The document and/or documents constituting the proposal Dr. Judy C. Egelston gave to the defendants in connection with a new program in Child and Curriculum courses for the Spring of 1973.

(39) The advertisement which the State University College at Geneseo caused to be published in the "American Association of Colleges For Teacher Education" for the position of Science Education Instructor in the Division of Educational Studies or in any other publication for the same position, in the Spring of 1973.

(40) The document and/or documents constituting responses of applicants and the defendants' response to applicants for the job of Science Education Instructor in the Division of Educational Studies, pursuant to any ad in the Spring of 1973.

(41) The Affirmative Action report written by James McNally, Director of Office of Research, State University College at Geneseo, approximate date of report, Spring of 1973 or Fall of 1972.

(42) The document and/or documents showing persons constituting the Affirmative Action Committee appointed by President Robert W. McVittie and functioning in the Fall of 1971.

(43) The document and/or documents constituting all writings of any nature whatsoever of the Affirmative Action Committee appointed by President Robert W. McVittie and functioning in the Fall of 1971.

(44) All issues of the official college newspaper, Compass, for January, 1973 and November, 1972.

(45) The document and/or documents constituting the statistics on employment of females at defendant college presented during Women's Day (special day), January, 1973.

(46) Any recording and/or tape of the Women's Day (special day), January, 1973.

(47) The document and/or documents constituting the proposal Dr. Judy Cobb Egelston gave to the defendants in connection with a new program in the Child and Curriculum Courses for the Spring of 1972.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel. 716-232-2292

February 18, 1975

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice to Produce was served on the defendants by my causing a copy thereof to be delivered to the offices of the Attorney General of the State of New York, 300 Terminal Building, Rochester, New York this 18th day of February, 1975 and my causing a courtesy copy to be mailed to Kenneth J. Connolly, Esquire, Office of the Attorney General, State of New York, The Capitol, Albany, New York, 12224 and to Kenneth M. Davidson, Esquire, District Counsel, Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York, 14202 this 18th day of February, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York
Tel: 716-232-2292

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEC; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants	NOTICE OF MOTION TO COMPEL DISCOVERY Civil Action No. 75-9

PLEASE TAKE NOTICE that upon plaintiff's Summons and Complaint, plaintiff's Notice of Deposition of Thomas Colahan, dated February 18, 1975, plaintiff's Notice of Deposition of Nick LaGattuta, dated February 18, 1975, plaintiff's Notice to Produce, dated February 18, 1975, plaintiff's Cross Motion to Compel Service of Answer; Opposition to Issuance of Subpoena, dated February 17, 1975, plaintiff's Supplemental Affirmation in Support of Motion to Compel Service of Answer; Opposition to Issuance of Subpoena and to Enlarge Defendants' Time, dated February 19, 1975, plaintiff's Supplemental Affirmation in Support of Motion to Compel Service of Answer; Opposition to Issuance of Subpoena and to Enlarge Defendants' Time, dated February 25, 1975, the affirmation of Emmelyn Logan-Baldwin, dated April 15, 1975 and all the papers and proceedings heretofore had herein, the plaintiff will move at a motion term of this court to be held at the Federal Building, State Street, Rochester, New York, at 10:00 a.m. or as soon thereafter as counsel can be heard on the 28th day of April, 1975,

for an order pursuant to Federal Rule of Civil Procedure 37, compelling the defendants to appear for depositions and produce ducuments, pursuant to notices heretofore duly served on defendants and/or for an order of preclusion and for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that any responding affidavit and/or papers shall be served upon attorney for plaintiff on or before April 23, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
Office and Post Office Address
510 Powers Building
Rochester, New York 14614
Telephone: 716/232-2292

April 15, 1975

To: Attorney General for the State of New York
Office of the Attorney General
300 Terminal Building
Rochester, New York 14614

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants	AFFIRMATION IN SUPPORT OF MOTION TO COMPEL DISCOVERY Civil Action No. 75-9

Emmelyn Logan-Baldwin, under penalties of perjury, affirms the following:

1. I am an attorney at law, duly licensed to practice my profession in the State of New York. I am admitted to the bar of this court. I am the attorney for the plaintiff in the above noted action. I am familiar with the facts of the case and the proceedings in the case. This affirmation is submitted by me in support of plaintiff's Motion to Compel Discovery.

2. This is an action for injunctive relief, declaratory judgment and money damages to redress acts of discrimination in employment on the basis of sex. The action arises under the Constitution of the United States, the Fourteenth Amendment to the United States Constitution; Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, 42 U.S.C. §2000(e) 5(f); and under 42 U.S.C. §1983.

3. The court has jurisdiction over this action pursuant to 28 U.S.C. 1331, 1343, 2201 and 2202 and 42 U.S.C. §2000(e)5(f).

4. The lawsuit was initiated with the filing of the complaint on January 6, 1975.

5. A few days before defendants' answer was due to be filed to the complaint, defendants caused their attorneys to serve Motion to Compel Issuance of Subpoena and to Enlarge Defendants' Time, returnable before the court for argument on February 24, 1975.

6. As plaintiff pointed out, in her Cross Motion to Compel Service of Answer; Opposition to Issuance of Subpoena, dated February 17, 1975, Supplemental Affirmation in Support of Motion to Compel Service of Answer; Opposition to Issuance of Subpoena and to Enlarge Defendants' Time, dated February 19, 1975 and Supplemental Affirmation in Support of Motion to Compel Service of Answer; Opposition to Issuance of Subpoena and to Enlarge Defendants' Time, dated February 25, 1975, there was and is no basis in law or fact for such motion - such motion is a dilatory tactic employed by the defendants to delay expeditious handling of plaintiff's claims. All jurisdictional prerequisites for the filing of this lawsuit have been met by the plaintiff. In fact, the defendants have not been deprived of and will not be deprived of access to the Equal Employment Opportunity Commission file.

7. At oral argument of the defendants' motion, defendants admitted that they have not been and are not deprived of examination of the Equal Employment Opportunity Commission file and, without any notice whatsoever to the plaintiff, shifted the entire focus of the motion to request that the court instead direct a subpoena for the production of plaintiff's letter

complaint filed with the Office of Federal Contract Compliance. Plaintiff's attorney at oral argument orally consented to furnishing a copy of that complaint to the defendants, pointing out again that the viewing of that complaint furnished no basis in law or fact for any delay in defendants' serving answer to the complaint, pursuant to the Federal Rules of Civil Procedure.

8. I have learned since February 24, 1975 that a copy of plaintiff's letter complaint to the Office of Federal Contract Compliance has been made available to attorneys for the defendants and in excess of twenty days have expired since that time. At time of argument of defendants' motion, plaintiff advised the court of the filing of a brief in support of the cross motion. Attorneys for the defendants requested time to file a brief but no such brief has ever been served on attorney for plaintiff and the time for filing the same has long since expired.

9. On February 18, 1975 plaintiff caused to be served on the defendants by delivery to the offices of the Attorney General of the State of New York in Rochester, New York, Notice of Deposition of Thomas Colahan, dated February 18, 1975, Notice of Deposition of Nick LaGattuta, dated February 18, 1975, Notice to Produce, dated February 18, 1975. The deposition notice for Nick LaGattuta required his presence at the offices of the attorney for plaintiff on February 25, 26, and 27, 1975. The deposition notice for Thomas Colahan required his presence at the office of the attorney for the plaintiff on March 5 and 7, 1975. The Notice of Production required the production of documents for inspection and copying at the offices of plaintiff's attorney on March 20 and 21, 1975.

10. The defendants did not appear for the depositions scheduled nor did the defendants produce the documents - all as required by the Notices duly served pursuant to the Federal Rules of Civil Procedure. The defendants have totally ignored the notices duly served. No timely application was made to the court excusing appearance pursuant to the duly served notices.

11. One of the Assistant Attorney Generals for the State of New York advised attorney for plaintiff by letter dated February 21, 1975 that the deposition date for Nick LaGattuta was inconvenient. I called the Assistant Attorney General, Kenneth J. Connolly on March 4, 1975 to confirm the depositions for defendant Colahan. Mr. Connolly advised me that he was not planning to produce Mr. Colahan as scheduled. I told Mr. Connolly that we could set dates for the depositions convenient to all parties involved but that we would need to proceed with discovery since the notices were duly served and there was no basis to ignore them or to delay discovery. Mr. Connolly told me that he would confer with some of the other attorneys working on the case and be back in touch with me perhaps even that same day. There has been no further communication whatsoever from attorneys for the defendants.

12. All of the materials requested by the plaintiff in the Notice to Produce are materials which must be disclosed pursuant to Federal Rule of Civil Procedure No. 26. The depositions of the defendants must be taken pursuant to the Federal Rules of Civil Procedure.

13. Since the defendants have failed to appear for depositions duly noticed and to produce documents within the time provided by the Federal Rules of Civil Procedure, plaintiff requests that this court, pursuant to Rule 37 of the Federal Rules of Civil Procedure, order that the defendants be precluded from offering proof in defense of plaintiff's claims and/or be compelled to appear for depositions and produce documents forthwith and that the court grant the plaintiff costs, disbursements and attorneys fees for this motion and such other further relief as to the court may seem just and proper.

Emmelyn Logan-Baldwin

April 15, 1975
Rochester, New York

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Motion to Compel Discovery was served on the defendants by my causing a copy thereof to be delivered to the offices of the Attorney General of the State of New York, 300 Terminal Building, Rochester, New York this 16th day of April, 1975 and my causing a courtesy copy to be mailed to Kenneth J. Connolly, Esquire, Office of the Attorney General, State of New York, The Capitol, Albany, New York 12224 this 15th day of April, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Telephone: 716/232-2292

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON 1362 West Lake Road Conesus, New York 14435, Plaintiff, - against - STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO, GENESEO, NEW YORK, Defendants.	AFFIDAVIT IN OPPOSITION CIVIL ACTION FILE NO. CIV 75-9

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

KENNETH J. CONNOLLY, being duly sworn, says:

1. I am a Principal Attorney on the staff of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for defendants. I am assigned to the defense of this action and I am fully familiar with the facts and circumstances herein. This affidavit, made in opposition to plaintiff's motion to compel discovery, is based upon personal knowledge of the facts, conversations with persons having knowledge of the facts and upon documents and records in my possession.

2. This action was commenced on or about January 10, 1975. At the same time, plaintiff served notices of deposition to take the oral testimony of defendants Nick LaGattuta, Thomas Colahan and an employee of State University College at Geneseo, Virginia Kemp. The notices also called for the production of the same documents which are the subject of this motion.

3. On January 22, 1975 I corresponded with plaintiff's attorney and advised that the notices of deposition were improper and were being treated as nullities. (Annexed hereto as Exhibit 1 is a copy of my letter of January 22, 1975.)

4. I have also been advised by the Office of Counsel of the State University of New York that the New York State Division of Human Rights has issued a subpoena duces tecum which calls for the production of the very same documents which are the subject of this motion. Upon information and belief, this subpoena duces tecum was issued at the request and direction of plaintiff's attorney. The State University of New York moved, in Supreme Court, Albany County, to quash the subpoena duces tecum upon the ground that the subpoena duces tecum was issued at the request of a private attorney in violation of the rules and regulations of the Division of Human Rights. The motion to quash has been denied, but to date, no order has been served upon the Counsel to the State University.

5. This action allegedly "arises under the Constitution of the United States, the Fourteenth Amendment to the United States Constitution; Title VII of the Act of Congress known as 'the Civil Rights Act of 1964,' as amended by the Equal Employment Opportunity Act of 1972, 42 U. S. C. § 2000(e)5(f); and under 42 U. S. C. § 1983." (Complaint, paragraph 1.) On January 29, 1975 defendants served plaintiff with a notice of motion which sought an order enlarging defendants' time to answer and directing the Clerk of the Court to issue a subpoena to the United States Equal Employment Opportunity Commission. The reason for the motion, which was returnable February 24, 1975, was to enable defendants to determine whether plaintiff has complied with the jurisdictional prerequisites of 42 U. S. C. § 2000e-5.

6. On February 18, 1975, plaintiff served a notice of deposition for defendant Nick LaGattuta, which was returnable commencing February 25, 1975, the day after defendants' motion for enlargement of time was returnable. On February 18, 1975, plaintiff also served a notice of deposition for defendant Thomas Colahan which was returnable commencing March 5, 1975. Also on February 18, 1975, plaintiff served a notice to produce which was returnable on March 20 and 21, 1975 at the office of plaintiff's attorney. (Annexed hereto as Exhibit 2 are copies of the notices of deposition and the notice to produce.)

7. On February 21, 1975, I corresponded with plaintiff's attorney and advised that defendant LaGattuta would not appear on February 25, 1975 for two reasons (a) the pendency of the motion to enlarge defendants' time to answer or move against the complaint returnable February 24, 1975, and (b) the receipt of the notice only four (4) days prior to the date of the deposition did not afford sufficient time to consult with the defendant. (Annexed hereto as Exhibit 3 is a copy of my letter of February 21, 1975.)

8. The affidavit submitted in support of the motion to compel discovery states (Paragraph 10) that defendants have totally ignored the notices of deposition and the notice to produce, and further states (Paragraph 8) that the reason for the failure to appear was my statement that the deposition date for defendant LaGattuta was inconvenient. It is submitted that a perusal of my letter of February 21, 1975 will amply demonstrate that (a) the notices were not totally ignored, and (b) the failure to appear was not solely due to the inconvenience of the deposition date.

9. It is submitted that defendants have sufficient and reasonable grounds for not participating in pretrial discovery. Moreover, the improper service of notices of deposition simultaneously with commencement of the action, the service of notices immediately after defendants had moved for an enlargement of time, and the service of the subpoena duces tecum by the Division of Human Rights at the request of plaintiff's attorney could lead to the conclusion that plaintiff is more interested in harassment rather than discovery.

10. Defendants are also cross-moving to dismiss the complaint based upon the documents contained in the files of the Equal Employment Opportunity Commission and the Department of Health, Education and Welfare. It is defendants' position that plaintiff has failed to comply with the jurisdictional requirements of 42 U. S. C. § 2000e-5. If the complaint is dismissed in its entirety, the motion for discovery would become academic. If that portion of the complaint which is based upon 42 U. S. C. § 2000e-5 is dismissed, plaintiff would not be entitled to the sweeping discovery demanded by this motion and the notice to produce (Exhibit 2 annexed hereto.) To permit plaintiff to engage in a fishing expedition for an action which is the subject of a motion to dismiss would unreasonably burden defendants and would not be in the interest of justice.

11. The complaint alleges (Paragraph 3) that plaintiff was employed at State University College at Geneseo from September, 1970 to June, 1973. Despite this limited term of employment, plaintiff seeks to examine numerous documents and files covering a period of 10 years (notice to produce, paragraphs 1, 2, 3, 4, 6, 7, 8, 9 and 23). Additionally, plaintiff seeks to examine the personnel records of various named and unnamed employees of State University College at Geneseo (notice to produce, paragraphs 1, 3, 4, 6, 7, 8, 12, 20, 21, 22, 23, 27, 28, 34 and 40). Plaintiff also seeks to examine records relating to the non-renewal of the contract of plaintiff's spouse (notice to produce,

paragraph 17). Plaintiff's spouse is not a party to this lawsuit and the non-renewal of his contract has absolutely no relevance to the issues in this action.

12. In the event that the motion to dismiss the complaint is denied, it is respectfully requested that a protective order be issued in accordance with Exhibit 4 which is attached hereto. Exhibit 4 consists of a response to plaintiff's notice to produce and enumerates the material which, upon information and belief, is properly discoverable and the material which is not properly discoverable, with the reasons therefor.

13. It is respectfully requested, therefore, that if defendants' cross-motion to dismiss is denied, this Court issue a protective order in accordance with Exhibit 4. Moreover, since defendants have substantial justification for refusing to comply with the notices of deposition and the notice to produce, it is respectfully requested that plaintiff's request for costs, disbursements and attorney's fees be denied. It is submitted that the circumstances of this matter make an award of such expenses unjust.

WHEREFORE, it is respectfully requested that the motion be denied, or, in the alternative, that this Court issue a protective order in accordance with Exhibit 4, attached hereto, and that the Court grant such other and further relief as to the Court seems just and proper.

s/ Kenneth J. Connolly

Sworn to before me this

7th day of May, 1975.

THOMAS MEAD SANTORO
Notary Public, State of New York
Residing in Albany County
My Commission Expires 3-30-77

Notary Public

Telephone: GR 4-3340

January 22, 1975

Re: Egeluton v. State University
College at Geneseo, et al.
Notice of Depositions
Civ. 75-9

Ms. Ermelyn Logan-Baldwin
510 Powers Building
Rochester, New York

Dear Ms. Logan-Baldwin:

Pursuant to FRCP 32(d)(1), I am writing to inform you, on behalf of Thomas Colahan, Nick LaGattuta and Virginia Mapp, of objections to the Notice of Depositions attached to the summons and complaint in this matter.

FRCP 30(a) requires leave of the court if plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint. FRCP 34 grants defendants 30 days after service of request for the production of documents to respond (or 45 days from the service of the summons and complaint).

Plaintiff's request that defendants appear on January 27, 28, 29, 30 and 31 and on February 3, 4 and 5 would have the above-named defendants appear prior to the expiration of 30 days after the service of the summons and complaint. Having been made without leave of the court, the request is invalid.

Further, it is clear from FRCP 34(b) that a request for the production of documents must be made more than 30 days prior to the return date and, in the case of a request served with the summons and complaint, more than 45 days prior.

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EXHIBIT 1

For the above-stated reasons, Notices of Depositions served in this matter are being treated as nullities and no appearance will be made on the dates contained therein.

This letter is not to be considered as a concession of valid service upon the defendants or as a waiver of any defense which defendants may raise.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By

KENNETH J. CONNOLLY
Principal Attorney

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EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants	NOTICE OF DEPOSITION CIVIL ACTION NO. 75 - 9

PLEASE TAKE NOTICE that the plaintiff will take the deposition upon oral examination of the defendant Thomas Colahan, whose address is c/o State University College at Geneseo, Geneseo, New York, pursuant to the Federal Rules of Civil Procedure, before a notary public or some other officer duly authorized to administer oaths on March 5 and 7, 1975 between the hours of 10:00 a.m. and 12:00 noon and 2:00 p.m. and 5:00 p.m. on each day at 510 Powers Building, Rochester, New York, 14614.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel: 716-232-2292

February 18, 1975

Exhibit 2

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Deposition was served on the defendants by my causing a copy thereof to be delivered to the offices of the Attorney General of the State of New York, 300 Terminal Building, Rochester, New York this 18th day of February, 1975 and my causing a courtesy copy to be mailed to Kenneth J. Connolly, Esquire, Office of the Attorney General, State of New York, The Capitol, Albany, New York, 12224 and to Kenneth M. Davidson, Esquire, District Counsel, Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York, 14202 this 18th day of February, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel: 716-232-2292

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants	NOTICE OF DEPOSITION CIVIL ACTION NO. 75 - 9

PLEASE TAKE NOTICE that the plaintiff will take the deposition upon oral examination of the defendant Nick LaGattuta, whose address is c/o State University College at Geneseo, Geneseo, New York, pursuant to the Federal Rules of Civil Procedure, before a notary public or some other officer duly authorized to administer oaths on February 25, 26, and 27, 1975 between the hours of 10:00 a.m. and 12:00 noon and 2:00 p.m. and 5:00 p.m. on each day at 510 Powers Building, Rochester, New York, 14614.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel: 716-232-2292

February 18, 1975

Exhibit 2

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Deposition was served on the defendants by my causing a copy thereof to be delivered to the offices of the Attorney General of the State of New York, 300 Terminal Building, Rochester, New York this 18th day of February, 1975 and my causing a courtesy copy to be mailed to Kenneth J. Connolly, Esquire, Office of the Attorney General, State of New York, The Capitol, Albany, New York, 12224 and to Kenneth M. Davidson, Esquire, District Counsel, Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York, 14202 this 18th day of February, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel: 716-232-2292

BEST COPY AVAILABLE

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON Plaintiff -v- STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO Defendants	NOTICE TO PRODUCE CIVIL ACTION NO. 75 - 9

Pursuant to the Federal Rule of Civil Procedure 34(b) the defendants are required to produce for copying and inspection at the offices of Emmelyn Logan-Baldwin, Esquire, Attorney for Plaintiff, 510 Powers Building, Rochester, New York, 14614 on March 20 and 21, 1975 between the hours of 9:15 a.m. and 12:00 noon and 1:15 p.m. and 5:00 p.m. on each day the following documents:

(1) Entire personnel records of Judy C. Egelston, Patrick DeMarte, Gilbert Slote, Ramon Rocha, Richard Egelston.

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Exhibit 2

(2) The document and/or documents constituting the affirmative action program of the State University College at Geneseo from 1965 to date and all documents constituting background data, supporting data and/or studies made by the defendants in connection with same from 1965 to date.

(3) The document and/or documents showing the name, sex, classification, pay rate, salary, advancement experience, prior experience, educational background and length of service for the following: All persons employed by defendants in the Division of Educational Studies from 1965 to date;

All persons holding Committee chairs within the Division of Educational Studies from 1965 to date;

All persons employed in the Holcomb Campus School, 1965 to date;

All persons employed in the State University College at Geneseo Milne Library, 1965 to date.

(4) The document and/or documents of the defendants showing the recommendations of the Promotion - Tenure - Retention Committee of the Division of Educational Studies for renewal and non-renewal of contracts, 1965 to date; the document and/or documents showing the rejections and acceptances of those recommendations by the defendants, from 1965 to date.

(5) All documents of whatever description, notes memoranda, letters, etc., in connection with the decision of defendants not to renew the teaching contract of Dr. Judy C. Egelston in April of 1972 in spite of the recommendation of her department that she be renewed and all writings of any nature whatsoever in connection with the consideration by the Promotion-Tenure-Retention Committee of the renewal of Dr. Judy C. Egelston's contract in Spring, 1972.

Exhibit 2

(6) Job description and/or descriptions for all positions in the Division of Educational Studies at State University College at Geneseo, 1965 to date.

(7) Pay scales for all positions in State University College at Geneseo, Division of Educational Studies, 1965 to date.

(8) The document and/or documents showing the methods of appointment, qualifications for appointment and job responsibilities of committee chairpersons within the Division of Educational Studies, 1965 to date.

(9) The document and/or documents of the defendants constituting the policy of the State University College at Geneseo of not hiring non-renewed faculty persons for summer school sessions, 1965 to date.

(10) The document and/or documents stating the policy of the State University College at Geneseo which prefers persons holding doctorates to teach summer school.

(11) The advertisement which the State University College at Geneseo caused to be published in the "American Association of Colleges for Teacher Education" for the position of Science Education Instructor in the Division of Educational Studies in the Spring of 1972.

(12) The document and/or documents constituting responses of applicants and the defendants' response to applicants for the job of Science Education instructor in the Division of Educational Studies, pursuant to advertisement of Spring of 1972.

(13) The document and/or documents constituting all notes, letters, memoranda, etc., by which the defendants offered and/or considered offering Dr. Judy C. Egelston a teaching job in the Summer session at State University College at Geneseo in the Summer of 1972.

Exhibit 2

(14) The document and/or documents constituting the "additional broader considerations" which were considered by the defendants in reaching the determination of non-renewal of Dr. Judy C. Egelston's contract.

(15) The document and/or documents constituting evidence of "changing enrollment patterns, discipline changes, economic resources and the maintenance of high professional standards" of the defendants which have been suggested as factors leading to respondents' decision for the non-renewal of Dr. Judy C. Egelston's contract.

(16) The document and/or documents constituting policy changes in the Division of Educational Studies which were under consideration at the time of non-renewal of Dr. Judy C. Egelston's contract and which were a factor in the non-renewal of Dr. Judy C. Egelston's contract.

(17) The document and/or documents constituting all writings of any nature whatsoever in connection with defendants' non-renewal of the contract of Dr. Judy C. Egelston's husband, Richard Egelston.

(18) The document and/or documents constituting the criteria for evaluation of professors in connection with review for renewal/non-renewal of contracts.

(19) The "new New York State Education Department guide-line concerning teacher education curriculum which radically changed the mode of certification for teachers" and which had reduced the need for science education professors, at the time of non-renewal of Dr. Egelston's contract, referred to in defendants' memorandum of March 1, 1974 to the New York State Division of Human Rights.

(20) The document and/or documents constituting all writings of any nature whatsoever surrounding the notice of

Exhibit 2

the State University College at Geneseo to terminate Patrick DeMarte in the fall of 1970.

(21) All student evaluation print-outs rating Dr. Judy C. Egelston during her employment by the defendants, as well as such prints-outs rating all other employees of the Division of Educational Studies during the same period.

(22) Letter of August 8, 1972 from T. Colahan to N. LaGattuta regarding the award of discretionary increases to employees in the Division of Educational Studies.

(23) The document and/or documents constituting the written policy of the State University College at Geneseo for reimbursement of expenses of employees at attendance at professional conferences in which the employee is participating, 1965 to date.

(24) All writings of any nature whatsoever generated by the State University College at Geneseo Affirmative Action Committee.

(25) Memorandum from Dr. N.J. Bauer to Tom Colahan, June 11., 1973, re: termination of Dr. Judy C. Egelston.

(26) The Request for Travel Funds of Judy C. Egelston to conference, Association for the Education of Teachers of Science, Toronto, Ontario, Canada, Spring, 1973.

(27) Memorandum from Thomas S. Colahan to Dr. J. Pratt Krull, Jr., August 8, 1972 - re: discretionary salary increases, 1972 - 1973.

(28) The document and/or documents showing the purpose of Holcomb School, Geneseo, New York, description of programs, the background and qualifications of personnel employed.

(29) The Register - June 6, 1972.

(30) Faculty list of defendant College as of September 15, 1972.

Exhibit 2

(31) Trustee policies of defendant College - 1972.

(32) Senate Professional Association agreement - 1972-1973 academic year.

(33) The document and/or documents constituting written statements made by students of Dr. Judy C. Egelston concerning Dr. Egelston's performance as a teacher.

(34) The document and/or documents constituting the entire working papers of the Promotion - Tenure - Retention Committee of the Division of Educational Studies of defendant school for the 1972-1973 academic year.

(35) The document and/or documents constituting the statistics on employment of females at defendant College presented during the "educational marathon" held at defendant College, Nov., 14, 1972.

(36) Any recording and/or tape of the "educational marathon" at defendant College, Tuesday, November 14, 1972.

(37) The document and/or documents constituting Phase I Equal Employment Opportunity Plan of State University of New York.

(38) The document and/or documents constituting the proposal Dr. Judy C. Egelston gave to the defendants in connection with a new program in Child and Curriculum courses for the Spring of 1973.

(39) The advertisement which the State University College at Geneseo caused to be published in the "American Association of Colleges For Teacher Education" for the position of Science Education Instructor in the Division of Educational Studies, or in any other publication for the same position, in the Spring of 1973.

Exhibit 2

(40) The document and/or documents constituting responses of applicants and the defendants' response to applicants for the job of Science Education Instructor in the Division of Educational Studies, pursuant to any ad in the Spring of 1973.

(41) The Affirmative Action report written by James McNally, Director of Office of Research, State University College at Geneseo, approximate date of report, Spring of 1973 or Fall of 1972.

(42) The document and/or documents showing persons constituting the Affirmative Action Committee appointed by President Robert W. McVittie and functioning in the Fall of 1971.

(43) The document and/or documents constituting all writings of any nature whatsoever of the Affirmative Action Committe appointed by President Robert W. McVittie and functioning in the Fall of 1971.

(44) All issues of the official college newspaper, Compass, for January, 1973 and November, 1972.

(45) The document and/or documents constituting the statistics on employment of females at defendant college presented during Women's Day (special day), January, 1973.

(46) Any recording and/or tape of the Women's Day (special day), January, 1973.

(47) The document and/or documents constituting the proposal Dr. Judy Cobb Egelston gave to the defendants in connection with a new program in the Child and Curriculum Courses for the Spring of 1972.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tel. 716-232-2292

February 18, 1975

EXHIBIT 2

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice to Produce was served on the defendants by my causing a copy thereof to be delivered to the offices of the Attorney General of the State of New York, 300 Terminal Building, Rochester, New York this 18th day of February, 1975 and my causing a courtesy copy to be mailed to Kenneth J. Connolly, Esquire, Office of the Attorney General, State of New York, The Capitol, Albany, New York, 12224 and to Kenneth M. Davidson, Esquire, District Counsel, Equal Employment Opportunity Commission, 1 West Genesee Street, Buffalo, New York, 14202 this 18th day of February, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York
Tel: 716-232-2292

Telephone: GR 4-3310

February 21, 1975

Re: Egelston v. State University
College at Geneseo, et al.
Notice of Depositions
Civ. 75-9

Ms. Emmalyn Logan-Baldwin
510 Powers Building
Rochester, New York

Dear Ms. Logan-Baldwin:

The notice of deposition for defendant Nick LaGattuta was received by us today at approximately 2:30 p.m.

As you are aware, defendants have moved to enlarge their time to answer or move against the complaint, which motion is returnable on February 24, 1975. In view of that fact, and in view of the fact that because of the postal strike we have not received sufficient time to confer with our client prior to the date set forth in the notice, the defendant will not appear for the deposition.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By

[redacted] J. CONNOLLY
Deputy Attorney

EXHIBIT 3

BEST COPY AVAILABLE

If defendants' motion to dismiss is denied, defendants request that the notice to produce be resolved in the following manner. (The paragraph numbers below correspond to the paragraph numbers in the notice.)

1. The personnel records of Judy C. Egelson, Patrick DeMarte, Gilbert Slote and Ramon Rocha, with the exclusion of all confidential letters of recommendation.

The file of Richard Egelston is not relevant since he was employed in a completely separate area of the University.

2. Defendants will supply a copy of the affirmative action program. However, there was no requirement of such a program until 1972 or 1973.

3. Defendants are unable to comply with this request since it is too broad, covers a period of ten (10) years and defendants do not understand what is meant by advancement experience and prior experience. Additionally, does length of service mean at Geneseo or University wide. Moreover, the information, with respect to the persons employed at Geneseo Milne Library, is totally irrelevant to this action.

If plaintiff can clarify the terms, defendants can produce information for employees, with the exception of the employees of the Library, for the years 1970-1973.

4. There was no Committee prior to 1971. Information can be provided from 1971-1973.

5. Defendants will agree to provide plaintiff with a copy of her personnel file.

6. No separate job descriptions exist. The only job descriptions are for classified positions under the Civil Service Law, which positions do not include members of the faculty.

7. Defendants can supply copies of the salary schedule for each rank of academic employees for 1970-1973.

8. Defendants will agree to supply copies of any official documents concerning chairpersons for the period 1970-1973.

9. No written policies or documents exist.

10. No written policies or documents exist.

11. No such ad appeared in the spring 1972.

12. Non-exist.

13. Defendants have previously agreed to supply a copy of plaintiff's personnel file.

14. The quoted material is taken from a memorandum of law and fact submitted by the University Counsel to the State Division of Human Rights. The statements constitute the conclusions of the writer and represent his analysis of the underlying issues in the Division of Human Rights' complaint. Such material is attorney's work product and is privileged.

15. The quoted material is taken from a memorandum of law and fact submitted by the University Counsel to the State Division of Human Rights. The statements constitute the conclusions of the writer and represent his analysis of the underlying issues in the Division of Human Rights' complaint. Such material is attorney's work product and is privileged.

16. Non-exist.

17. Information relating to the non-renewal of the contract of plaintiff's spouse is not relevant.

18. This information is contained in the policies of the Board of Trustees and will be made available.

19. The guideline is a public document and a copy may be secured from the Education Department.

20. Defendants have previously agreed to provide a copy of the personnel file of Patrick DeMarte.

21. Defendants will agree to provide plaintiff with copies of the student evaluation printout rating. Additionally, any student evaluation printouts of other faculty members made during June 1970 and June 1973, and which were made public, will be supplied to plaintiff.

22. A copy will be given to plaintiff.

23. This material exists for the period 1971-1973 and will be supplied to plaintiff.

24. This Committee did not begin functioning until late fall 1973.

25. This information will be supplied to plaintiff.

26. Defendants do not have a copy of such a request. However, since the request was prepared by plaintiff, plaintiff should possess a copy of the request.

27. This information will be supplied to plaintiff.

28. Defendants do not understand what information is sought and request that plaintiff clarifies this paragraph.

29. The Register is a student newspaper which is not produced by defendants.

30. This information will be supplied.

31. This information will be supplied.

32. This information will be supplied.

33. See Item 21 above.

34. Any working papers of the members of the Committee are not official University documents, but rather are the personal property of the members of the Committee. Defendants have no knowledge of the existence or content of any working papers.

A copy of the Committee report will be made available.

35. Defendants are unable to comply with this request since defendants did not participate in an "educational marathon".

36. Defendants are unable to comply with this request since defendants did not participate in an "educational marathon".

37. Defendants will supply plaintiff with this information.

38. Defendants have no knowledge of such a document and submit that if such a document does exist, plaintiff has a copy.

39. This information will be supplied to plaintiff.

40. The advertisement was erroneously placed and all applicants were so advised. Noone was hired to fill the position.

41. If such a report exists, a copy will be given to plaintiff.

42. No such committee existed until late 1973 which was after plaintiff left State employment.

43. See Item 42 above.

44. Copies of any existing issues will be made available to plaintiff.

45. Women's Day (special day) was a student-run activity and defendants have no documents, recordings or tapes pertaining to this matter.

46. Women's Day (special day) was a student-run activity and defendants have no documents, recordings or tapes pertaining to this matter.

47. See paragraph 38 above.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON 1362 West Lake Road Conesus, New York 14435, Plaintiff, - against - STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO, GENESEO, NEW YORK, Defendants.	CIVIL ACTION FILE NO. CIV 75-9

CROSS-MOTION TO DISMISS

Defendants move the Court pursuant to Federal Rules of Civil Procedure, Rule 12(b), dismissing the complaint upon the grounds that the Court lacks jurisdiction over the persons of defendants, the Court lacks jurisdiction over the subject matter of the action, and the complaint fails to state a claim upon which relief can be granted.

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Attorney for Defendants
The Capitol
Albany, New York 12224

By:

S/ Kenneth J. Connolly
KENNETH J. CONNOLLY
Principal Attorney
Telephone: (518) GR 4-3340

NOTICE OF CROSS-MOTION

TO: MS. EMMELYN LOGAN-BALDWIN
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614

PLEASE TAKE NOTICE, that the undersigned will bring the above cross-motion on for a hearing before this Court at the United States Court House, Rochester, New York, on the 12th day of May, 1975 at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Attorney for Defendants
The Capitol
Albany, New York 12224

By:

S/ Kenneth J. Connolly

KENNETH J. CONNOLLY
Principal Attorney
Telephone: (518) GR 4-3340

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON
1362 West Lake Road
Conesus, New York 14435,

Plaintiff,

- against -

STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO, GENESEO, NEW YORK,

Defendants.

AFFIDAVIT

CIVIL ACTION FILE NO. CIV 75-9

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

KENNETH J. CONNOLLY, being duly sworn, says:

1. I am a Principal Attorney on the staff of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for defendants. I am assigned to the defense of this action and I am fully familiar with the facts and circumstances herein. This affidavit is made in support of defendants' motion to dismiss the complaint.

2. The complaint alleges (paragraph 1) that this Court has jurisdiction over this action under 28 U. S. C. §§ 1331, 1343, 2201 and 2202 and 42 U. S. C. § 2000(e)5(f). The action seeks a judgment declaring, among other things, that defendants have discriminated against plaintiff because of sex. In addition, the action seeks money damages and injunctive relief.

3. The complaint further alleges (paragraph 2) that plaintiff filed charges of discrimination with the Equal Employment Opportunity Commission (hereinafter referred to as EEOC) and that the EEOC has deferred the charges. The charges of discrimination were presumably filed with the EEOC pursuant to the provisions of 42 U. S. C. § 2000e-5.

4. 42 U. S. C. § 2000(e)5(e) provides, in part:

> "(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter...." (Emphasis added.)

5. This Court has previously issued a subpoena directed to the Office of Regional Director, Department of Health, Education and Welfare. The subpoena called for the Regional Director to produce a file containing a complaint filed by plaintiff. Annexed hereto and made a part hereof as Exhibit 1 is a copy of that file.

6. A perusal of the entire file clearly indicates that plaintiff's complaint of discrimination does not comply with the jurisdictional prerequisites of 42 U. S. C. § 2000e-5. This failure to comply is clearly demonstrated by plaintiff's letters of January 24, 1973 and December 4, 1973 in which plaintiff states that she is filing a class, rather than an individual, complaint.

7. Additionally, 29 C. F. R. § 1601.11 provides:

> "§ 1601.11 Contents; amendment.
>
> "(a) Each charge should contain the following:
>
> "(1) The full name and address of the person making the charge.
>
> "(2) The full name and address of the person against whom the charge is made (hereinafter referred to as the respondent).
>
> "(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practice.
>
> "(4) If known, the approximate number of employees of the respondent employer or the approximate number of members of the respondent labor organization, as the case may be.
>
> "(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced befors a State or local authority charged with the enforcement of fair employment practice laws, and, if so, the date of such commencement and the name of the authority.

> "(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is deemed filed when the Commission receives from the person making a charge a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to swear to the charge, or to clarify and amplify allegations made therein, and such amendments alleging additional acts which constitute unlawful employment practices directly related to or growing out of the subject matter of the original charge will relate back to the original filing date."

8. Plaintiff's letter of January 24, 1973, as well as the remainder of the information contained in the file of the Regional Director, falls far short of the regulation (29 C. F. R. § 1601.11) promulgated by the Equal Employment Opportunity Commission.

9. The Equal Employment Opportunity Commission (EEOC) has also supplied defendants with a copy of its file. (Exhibit 2 annexed hereto.) While there is a verified complaint contained in that file, this complaint was not filed until June 24, 1974, some 17 months after the initial class complaint was filed with the Regional Director of the Department of Health, Education and Welfare.

10. The complaint in this action alleges (paragraph 19) that plaintiff received notice of non-renewal of her

contract on or about May 15, 1972. Since plaintiff did not contact the Department of Health, Education and Welfare (hereinafter HEW) until January 23, 1973 (Exhibit 1), more than 180 days had elapsed and the charge, therefore, was not timely filed. Moreover, the charge filed with HEW, as well as all other correspondence sent by plaintiff to HEW, referred only to the State University College at Geneseo and made no mention of any of the individual defendants.

11. It is submitted therefore, that the charge filed with HEW was untimely under 42 U. S. C. § 2000(e)5(e). Moreover, no charge was filed against the individual defendants until June 24, 1974, more than two years after plaintiff received notice of non-renewal of her contract. These facts make it clear that the charge filed with HEW did not confer jurisdiction upon EEOC to entertain the charge or to allow plaintiff to file an amended charge on June 24, 1974.

12. Plaintiff's cause of action for discrimination in employment is created solely by statute (42 U. S. C. § 2000e, et seq.). It is incumbent that plaintiff comply with the statutory conditions precedent which would confer jurisdiction upon this Court to entertain this action. This failure to comply is fatal and requires dismissal of the cause of action based upon the charge of employment discrimination.

13. The complaint (paragraph 22) also alleges that defendants refused to allow plaintiff to teach at the summer school session in 1972 and that defendants offered employment only after plaintiff filed a complaint with the State Division of Human Rights and after plaintiff had committed herself to other summer employment. This allegation is simply not true. I have been advised that plaintiff taught during both the 1971 and 1972 summer school sessions. Additionally, plaintiff did not file her complaint with the State Division of Human Rights until February, 1973, approximately 7 months after the summer 1972 session began. It is inconceivable that the filing of a complaint in February, 1973 could have precipated an offer to teach at the summer 1972 session.

14. Plaintiff further alleges a cause of action for denial of equal protection based upon 42 U. S. C. § 1983. On February 7, 1973, plaintiff also filed a complaint with the State Division of Human Rights. These charges are presently pending and a hearing into these charges has been commenced.

15. Plaintiff's allegation of a denial of equal protection can be adequately resolved before the State Division of Human Rights and, if necessary, before the State Supreme Court. To require defendants to defend these allegations in two forums at the same time will unreasonably burden and harass defendants. Additionally, the State University College of Arts and Sciences, Division of Educational Studies and the State University College at Geneseo are the State since they are a part of the State University of New York. It is well settled law that the State is not a person under 42 U. S. C. § 1983.

16. As to the individual defendants, the complaint should be dismissed since plaintiff has, and is pursuing, an adequate remedy under State law. As to the State defendants, the complaint must be dismissed since the State is not a person under 42 U. S. C. § 1983. It is submitted that plaintiff will not be prejudiced by the dismissal of this action in view of the complaint filed with the State Division of Human Rights. However, the denial of the motion to dismiss will seriously prejudice defendants who are presently obligated to defend the same action in this Court and before the State Division of Human Rights.

s/ Kenneth J. Connolly

Sworn to before me this
7th day of May, 1975.

THOMAS MEAD SANTORO
Notary Public, State of New York
Residing in Albany County
My Commission Expires March 30, 19...

Notary Public

C-C02555

STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCE, GENESEO, N.Y. 14454

Jan. 24, 1973
Blake C 209

Mr. John Wilks, Director
Office of Federal Contract Compliance
Dept. of Labor
Washington, DC 20210

RECEIVED
JAN 29 1973
OFFICE OF
FEDERAL CONTRACT
COMPLIANCE

Exhibit 1

Dear Mr. Wilks:

I would like to request a compliance review of SU College at Geneseo since I have reason to believe there is sex discrimination in the areas of hiring, promotions and salaries. I have collected specific information regarding my own situation and have not received satisfactory support from the professional bargaining agent or campus.

Any information will be very much appreciated.

Sincerely,
(Mrs.) Judy C. Eglston
Assistant Professor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Federal Contract Compliance
WASHINGTON, D.C. 20210

MAR 5 1973

Ms. Mary Berry, Director
Contract Compliance Division
Office of Civil Rights
Department of Health, Education & Welfare
Room 3246, North Building
Washington, D. C. 20201

Dear Ms. Berry:

The enclosed correspondence from Dr. Judy C. Egelston concerns sex discrimination at the State University, College of Arts and Science, Geneseo, New York.

We are referring it to you for further reply.

Sincerely,

PHILIP J. DAVIS
Acting Director

Enclosure

Exhibit 1

1362 West Lake Road
Conesus, New York 14435
March 10, 1973

Ms. Mary Berry, Director
Women Education Division
Department of Health, Education and Welfare
Room 3246 North Building
Washington, D.C. 20201

Dear Ms. Berry:

I received word from Mr. Philip J. Davis, acting director of Employment Standards Administration, U. S. Department of Labor that my request for a compliance review was forwarded to your office.

At this time I have been advised by Mr. Edward Lynch of the State Division of Human Rights in Rochester which is currently investigating my case, that all further action should wait for the results of their field investigation.

One point could be clarified: exactly what is the procedure followed by your office in reviewing the allegation of sex discrimination? Are there special forms which must be completed? I would like to take all the preliminary steps necessary for commencing the review.

Sincerely.

Judy C. Egelston

Judy C. Egelston

Exhibit 1

BEST COPY AVAILABLE

APR 5 1973

Dr. Judy Egelston
1362 West Lake Road
Geneseo, New York 14435

Dear Dr. Egelston:

This is in response to your letter of January 24, that was referred to this Office from the Department of Labor and your letter of March 10, concerning sex discrimination at the State University of New York at Geneseo.

We have transferred your sex discrimination complaint to our New York Regional Office where it will be scheduled for investigation consistent with the priorities and commitments of the regional office.

In your letter of March 10, you requested information on the procedures followed in reviewing allegations of sex discrimination. A copy of our Higher Education Guidelines are enclosed that explain the authority and procedures of this Office under Executive Order 11246.

If you have any additional inquiries regarding your complaint, please feel free to contact Mr. William R. Valentine, Regional Civil Rights Director, 26 Federal Plaza, New York, New York 10007.

Sincerely yours,

John Hodgdon
acting Director
Higher Education Division
Office for Civil Rights

Enclosure

COLE/MDU/3/29/73

Exhibit 1

OFFICE OF THE SECRETARY

HE-697-73 108

RECEIVED
OCR

TO : William R. Valentine
Regional Civil Rights Director

DATE: APR 5 1973 APR 9 1973

REGION II

FROM : John Hodgdon
Acting Director
Higher Education Division

Valentine

SUBJECT: Sex discrimination complaint of Dr. Judy Egelston vs. State University of New York

Attached is a class action complaint of sex discrimination at the State University of New York, that is being forwarded for your consideration and handling. Dr. Egelston has been informed of this referral.

Attachment

Exhibit 1

DEPART NT OF HEALTH, EDUCATION, AND WELFARE

April 12, 1973

Dr. Judy Egelston
1362 West Lake Road
Conesus, New York 14435

Dear Dr. Egelston:

Our Office in Washington, D. C. has forwarded the class action complaint of sex discrimination which you have filed against the State University of New York at Geneseo.

I cannot at this time make any accurate forecast as to the time when this Office will be able to initiate an investigation into the allegations of your complaint. We are presently faced with a tremendous backlog with very limited manpower.

I can only assure you that your complaint will receive consideration. We will contact you closer to the time when we are about to begin the investigation, at which time we will advise you of the starting date.

We appreciate your bringing this matter to our attention.

Sincerely,

William R. Valentine
Regional Civil Rights Director

FILE COPY

OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE	OFFICE	SURNAME	DATE

Exhibit 1

12/10/73

Bill Valentine & Joel Barkan

I phoned Dr. Eglelston and explained to her that the second sentence — not line — in paragraph one simply states that effective March 24, 1972 and continuing EEOC has jurisdiction of individual complaints while ("while" meaning at the same time) we are still responsible for class complaints. Dr. Eglelston accepted my explanation graciously. She, then, reiterated that she wanted the investigation pursued as a class complaint as shown in her reply of December 4, 1973. I assured her that we would investigate her class complaint as soon as our workload and schedule permitted us to do so.

Dr. Eglelston also advised me that her case is pending before the State Human Rights Commission and that a decision should be rendered soon. She will advise us of the outcome.

Tom Barnett

Exhibit 1

November 26, 1973

Dr. Judy C. Egelston
1362 West Lake Road
Conesus, New York 14435

Dear Dr. Egelston:

In order to properly process your complaint filed against SUNY at Geneseo, we need to reach a definitive conclusion as to whether or not it is an individual or a class complaint. This action is necessary for effective March 24, 1972, and continuing the Equal Employment Opportunity Commission has jurisdiction of individual complaints while we are still responsible for class complaints.

In our initial review of your complaint we reached the conclusion that it was a class complaint, i.e. a complaint seeking relief for an affected class or group as well as general allegations of patterns of discrimination at an institution. In reviewing your complaint again, we note that you said, "I have collected specific information regarding my own situation and have not received satisfactory support from the professional bargaining agent or campus". This statement indicates that your complaint might be an individual one. If it is, we will refer it to the Equal Employment Opportunity Commission for disposition. If, however, it is a class complaint this office will conduct the investigation as we advised you in our letter of April 12, 1973.

In view of the above explanation please let us know whether you intended your complaint filed with this office to be an individual or class complaint.

Sincerely yours,

Joel W. Barkan
Regional Director
Office for Civil Rights

TB/tg
11/26/73

Exhibit 1

Career Development in the Education of the Deaf

RECEIVED
OCR
DEC 8 1973
REGION II

PROJECT ADMINISTRATOR
Ralph L. Hoag, Ed.D.

PROJECT DIRECTOR
Harold L. Munson, Ed.D

ADDRESS CORRESPONDENCE TO
Rochester School for the Deaf
1545 St. Paul Street
Rochester, New York 14621
716-544-1240

PARTICIPATING SCHOOLS

Lexington School for the Deaf

Mill Neck Manor Lutheran School for the Deaf

New York School for the Deaf

New York State School for the Deaf

Rochester School for the Deaf

St. Francis de Sales School for the Deaf

St. Joseph's School for the Deaf

St. Mary's School for the Deaf

Catholic Charities Day Classes for the Deaf

Cleary School

School for the Deaf - JHS 47

School for Language and Hearing-Impaired Children

December 4, 1973

Mr. Joel W. Barkan, Regional Director
Office for Civil Rights
Department of Health, Education and Welfare
Region II, Federal Building
26 Federal Plaza
New York, New York 10007

Dear Mr. Barkan:

Please check your copy of the November 26th letter to me. The third line in the first paragraph seems to be an incomplete sentence, and I'm not sure if the jist of your proposal is clear.

I assume that as a member of an affected class which has apparently suffered sex discrimination at SUNY College at Genesee, the data concerning my own salary, and non-renewal of contract would also be appropriate for you to examine. It also seemed obvious that if I tried to use the legal advice of the bargaining unit on campus with no satisfaction, then others would have also received inadequate support or perhaps been discouraged completely from seeking assistance. I therefore request that you pursue the investigation as a class complaint.

As I mentioned last spring, the N. Y. State Division of Human Rights has been handling the sex bias complaint on my individual claim. Mr. Edward Lynch, regional director, advised that the HEW investigation be held up until a decision and perhaps settlement has been made through his efforts. Perhaps you may wish to contact him at 65 Broad Street, Rochester, N. Y.

Please let me know what action I am now responsible for to assist you in your investigation.

Sincerely,

Dr. Judy C. Egelston

(Dr.) Judy C. Egelston
Project Supervisor

JCE:mjf

Exhibit 1

Project sponsored by Cooperative Research Endeavors in the Education of the Deaf (CREED) as funded under ESEA TITLE I (P.L. 89-313)

Atwood OCR

EMMELYN LOGAN-BALDWIN
ATTORNEY AND COUNSELOR AT LAW
19 ARNOLD PARK
ROCHESTER, NEW YORK 14607
716-442-4150

113

JUN 18 1974

REGION II

June 17, 1974

Mr. William R. Valentine
Regional Civil Rights Director
Department of Health, Education
and Welfare, Region Two
Federal Building
26 Federal Plaza
New York, New York 10007

Re: Egelston vs State University College at Geneseo

Dear Mr. Valentine:

I have recently been retained by Dr. Judy C. Egelston who filed a class action complaint of sex discrimination against the State University College at Geneseo by forwarding letter of January 24, 1973 to the Office of Federal Contract Compliance. Subsequent correspondence from Phillip J. Davis, Acting Director of the Office of Federal Contract Compliance, and from John Hodgdon, Acting Director, Higher Education Division, Office of Civil Rights, Department of Health, Education and Welfare, indicate that your office was delegated the responsibility for investigation of the charges and appropriate action.

I would like for you to indicate to me the course of your investigation to date and your anticipated further course of investigation. I am anxious that this matter be pursued with dispatch to a conclusion. You might be interested in having one of your investigators meet with me since Dr. Egelston has developed substantial materials confirming the institution-wide discrimination on the basis of sex practiced by the State University College at Geneseo.

I look forward to hearing from you.

Sincerely,

Emmelyn Logan-Baldwin

ELB:mac
cc: Dr. Judy Egelston

Exhibit 1

JUL 12 1974

Mr. Emmelyn Logan-Baldwin
Attorney and Counselor at Law
19 Arnold Park
Rochester, New York 14607

Dear Mr. Logan-Baldwin:

This is to inform you that we have received your letter of June 17, 1974 regarding Dr. Judy C. Egelston's class action complaint of sex discrimination against the State University College at Geneseo.

A member of our office spoke to Dr. Egelston over the phone on 12/10/73 and informed her that we would investigate her complaint as soon as our workload and schedule permitted us to do so. Unfortunately, we are still working under the handicap of an extremely small staff and an enormous backlog of cases. Therefore we have yet to initiate the investigation.

Please be assured that we will contact you in the near future with a specific date as to when the initiation of the investigation will begin.

If you have any further questions, please do not hesitate to call our office at (212) - 264-3828.

Sincerely yours,

Joel W. Barken
Director, Office for Civil Rights
Region II

JW
ME/CV, 7/8/74

Exhibit 1

March 4, 1975

Our Reference:GC:RA: II:MS

Ms. Emmelyn Logan-Baldwin
510 Powers Building
Rochester, New York 14614

Re: Dr. Judy Egelston Complaint
Against SUNY at Geneseo

Dear Ms. Logan-Baldwin:

Enclosed is a copy of Dr. Egelston's original complaint as per your request. I contacted Mr. Bress and informed him that with your approval, I would send him a copy of same. My impression is that he is still planning to subpoena the remainder of the file.

Sincerely,

Borge Varmer
Regional Attorney

BY:_____
Marjorie Silver
Assistant Regional Attorney

Enclosure

MS:cfs

cc: Bill Valentine -- OCR

Exhibit 1

EMMELYN LOGAN-BALDWIN
ATTORNEY AND COUNSELOR AT LAW
19 ARNOLD PARK
ROCHESTER, NEW YORK 14607
716-442-4150

BUFFALO DISTRICT OFFICE
JUN 24 1974

June 20, 1974

Mr. Lloyd Bell
Regional Director,
Equal Employment Opportunity Commission
One West Genesee Street
Buffalo, New York 14202

Re: Egelston vs State University College at Geneseo et al

Dear Mr. Bell:

I herewith forward the particulars of the complaint in the above-noted matter. Complainant on or about January 24, 1973, while unrepresented by counsel perfected these claims of class-wide employment discrimination on the basis of sex against the respondents by sending a letter stating the charges to the Office of Federal Contract Compliance. The complainant, still unrepresented by an attorney, subsequently perfected her claims with the New York State Division of Human Rights.

Since the Office of Federal Contract Compliance and the Equal Employment Opportunity Commission have concurrent jurisdiction over the respondents and over the subject matter of the charges, I request that, consistent with EEOC Decision, No. 71-1115, January 11, 1971 (CCH EEOC Decisions ¶ 6201), that you confirm the filing of this charge as of January 24, 1973. I request that a Right To Sue Notice be issued to the complainant at your earliest convenience.

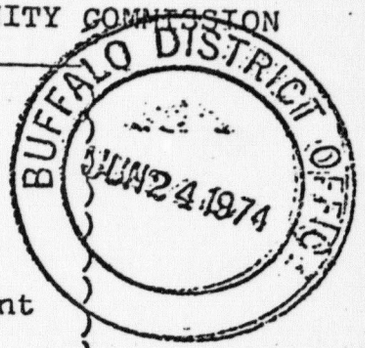
Sincerely,

Emmelyn Logan-Baldwin

ELB:mac
cc: Dr. Judy C. Egelston
1362 West Lake Road
Conesus, New York 14435

Exhibit 2

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION



JUDY C. EGELSTON
1362 West Lake Road
Conesus, New York 14435

Complainant

against
STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTULA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO, GENESEO, NEW YORK

Respondents

COMPLAINT

TBuy-0761

The aforenamed complainant, residing at the afore enumerated address, charges the aforenamed respondents whose address is as above with an unlawful discriminatory practice relating to employment on or about September, 1970 and continuing by denying complainant equal terms, conditions and privileges of employment and by the respondents engaging in a custom, practice and usage of discrimination against the complainant because of sex. The particulars are:

1. This complaint is brought pursuant to Title VII of the Civil Rights Act of 1964, which makes it an unlawful, discriminatory practice, for an employer, because of sex of any individual to discriminate against such individual in compensation, or in terms, conditions or privileges of employment. This charge of discrimination against the foregoing respondents was first filed, as required by Title VII of the Civil Rights Act of 1964, with the New York State Division of Human Rights on or about February 13, 1973. Complainant first filed her charges of institution-wide

discrimination on the basis of sex against the respondents with the federal government, Office of Federal Contract Compliance by letter of January 24, 1973.

2. Complainant JUDY C. EGELSTON is a private citizen who resides at 1362 West Lake Road, Conesus, New York.

3. Respondent, STATE UNIVERSITY COLLEGE AT GENESEO is an educational institution of the State of New York, a part of the State of New York college and university system. Respondent State University College of Arts and Sciences, Division of Educational Studies is an administrative subdivision of the State University College at Geneseo. Respondent THOMAS COLAHAN is the Vice-president for Academic Affairs of State University College at Geneseo. Respondent NICK LAGATTULA is the Dean of Educational Studies at the State University College at Geneseo. The respondents are employers within the meaning of Title VII of the Civil Rights Act of 1964.

4. This is a proceeding for a judgment as to the rights of the complainant, pursuant to Title VII of the Civil Rights Act of 1964, for damages, back wages, reinstatement and for a cease and desist order restraining the respondents from maintaining a practice, policy, custom or usage of:

A. Discriminating against the complainant and other females similarly situated because of sex with respect to compensation, terms, conditions and privileges of employment and

B. Limiting, segregating and classifying employees of respondents in ways which have deprived and deprive the complainant and other females similarly situated of employment oppor-

Exhibit 2

tunities and otherwise adversely affect their status as employees because of sex.

5. The respondents have consistently and purposefully limited their women employees, including complainant, of their rights guaranteed to them under the United States Constitution, Federal law and New York State law, with the intent and design, both directly and indirectly, of fostering and protecting the advantage and advancement of white male employees to the detriment of the female employees.

6. The respondents maintain a policy of discriminating against their female employees, including complainant, by virtually excluding them from certain job classifications. Job classification determines the rate of pay an employee receives. Women employees customarily and uniformly have lower job classifications and lower rates of pay than male employees performing the same or similar duties or responsibilities and possessing the same skills.

7. Respondents maintain a policy, practice, custom and usage of discriminating against their female employees, including the complainant, by placing their female employees in the lowest classifications on pay scales while requiring and expecting that they perform work equivalent to those males employed in the highest pay scales and classifications. The women receive pay on the basis of the low salary scale and classification.

8. Respondents maintain a policy, practice, custom and usage calculated to discriminate against female employees, including complainant, by a conscious practice of filling only certain

Exhibit 2

jobs in their job classifications with women employees which they carefully recruit with the design to hire only those women who will work for substandard wages.

9. Respondents maintain a policy, practice, custom and usage of recruitment for employment which is directed to seeking and hiring only the white male for the best-paying, career oriented jobs, while seeking and hiring women, including complainant, for the low-paying, low-classified jobs.

10. Respondents maintain a policy, practice, custom and usage of excluding women, including complainant herein, from training programs to which men with the equivalent or less education and skills are enrolled either at the commencement of their employment or during certain stages of their employment. Men employees customarily finish training programs with job classifications not customarily granted their female counterparts.

11. Respondents maintain a policy, practice, custom and usage of discriminating against their female employees and the complainant by classifying and assigning jobs for the white male employees as jobs which are career, supervisory and management oriented while classifying jobs for women which are low-paying and without career, supervisory or management potential.

12. Respondents have discriminated and are discriminating against the complainant and other female employees by maintaining a policy, practice, custom and usage of promoting and transferring employees so that the white male employee is advanced to the high-paying, career oriented, supervisory or management position while

Exhibit 2

the female employee is retained in the low-classified job which is not career, supervisory or management oriented.

13. Respondents have discriminated and are discriminating against the complainant and other female employees by maintaining a policy, practice, custom and usage of paying women employees of whatever job description, classification or job level, less than white male counterparts when the education, skill and competence of the woman employee equals or exceeds the education, skill and competence of the white male employee engaged in the same or similar work.

14. Respondents have discriminated and are discriminating against the complainant and their other female employees by maintaining a policy, practice, custom and usage of fostering an atmosphere in the employment situation which is calculated to harass, embarrass, humiliate and thereby cause the woman employee to "keep her place".

15. The respondents have discriminated and are discriminating against the complainant and other female employees by maintaining a policy, practice, custom and usage of attempting to intimidate and retaliating against females who complain of the illegal discriminatory acts of the respondents.

16. Complainant was hired by respondent college in or about September, 1970, as an assistant professor in the Division of Educational Studies. While complainant possessed at the time of hiring greater qualification and background for the position than a male, Patrick DeMarte, who was hired by the respondent college at the same time for a similar position, complainant was given the salary

of $11,000 (Eleven thousand dollars) per year while the male, Patrick DeMarte, was offered a starting salary of $11,750 (Eleven thousand seven hundred and fifty dollars). Throughout complainant employment with respondent college, she has, solely because she is female, been paid less than males who have the same or similar qualifications and experience and who perform the same or similar wor

17. In or about March, 1972, the Retention-Promotion-Tenur Committee of the respondent college recommended complainant Egelst for a two-year renewal of her contract. Respondent Colahan, actin on the advice of respondent LaGattula recommended non-renewal of complainant's contract. Thereafter, respondents refused to state any reason for non-renewal of complainant's contract and refused t reconsider the non-renewal decision which was urged by the Retention-Promotion-Tenure Committee.

18. Complainant received notification of non-renewal of her contract on or about May 15, 1972. At about that same time, complainant believes that the male hired at the same time she was hired, Patrick DeMarte, was notified of his contract renewal.

19. Complainant believes that the failure of the respondents to renew her contract after the strong recommendation by the Retention-Promotion-Tenure Committee for renewal on the basis of her performance was solely the result of the respondents' discriminating against her on the basis of sex. Complainant believes that such non-renewal by the respondents of her contract, solely on the basis of sex, is a part of a pattern, practice, custom and usage of the respondents of discriminating against its female employees.

Exhibit 2

20. Subsequent to respondents' non-renewal of complainant's contract, respondents caused advertisements to be placed for an individual to fill the precise position which was then held by complainant.

21. When complainant, after her non-renewal, complained that the non-renewal was a part of a practice, pattern, custom and usage of the respondents' discriminating against its female employees, the respondents retaliated against her by refusing to honor her request to teach in the 1972 summer school sessions. Respondents only relented on their decision to bar complainant from teaching in the summer school sessions for 1972 after complainant had filed a retaliation complaint setting forth the denial of opportunity with the New York State Division of Human Rights and after respondents, according to complainant's information and belief, knew that complainant had committed herself to other summer employment.

22. Complainant believes that the respondents have further retaliated against her for complaining of the institution-wide employment discrimination practiced against her and others by the respondents' failure to renew the teaching contract of her husband, Richard L. Egelston , subsequent to the non-renewal of complainant's contract. Complainant believes that these acts of retaliation by the respondents are a part of the pattern, practice, custom and usage of the respondents to try to intimidate and to retaliate against persons who complain of the institution-wide employment discrimination practiced by the respondents.

Exhibit 2

23. Complainant believes that the respondents have further retaliated against her and her husband for her having complained of the illegal employment discrimination practiced by the respondents; the respondents, complainant believes, have instituted a "blackball" of her and her husband in the State University system which has had the effect of insuring that neither complainant nor her husband, Richard L. Egelston, can be employed in the State University system in New York. Complainant and Richard L. Egelston have applied for teaching jobs in the University system subsequent to their respective non-renewals by the respondents and, while each has had outstanding qualifications for the jobs to which they have applied, each has received arbitrary rejection of all applications.

24. Complainant Egelston is now suffering and will continue to suffer irreparable injury from respondents' practices, customs and usages set forth herein.

WHEREFORE, the complainant respectfully prays that the commission:

1. Grant the complainant a cease and desist order enjoining the respondents, their agents, successors, employees, attorneys and those acting in concert with them and at their direction from continuing or maintaining any policy, practice, usage or custom of denying, abridging, withholding, conditioning, limiting or otherwise interfering with the rights of the complainant and their women employees to enjoy equal employment opportunities as secured by the United States Constitution, Federal law and State law.

Exhibit 2

2. Establish a mechanism for the enforcement of the cease and desist order by requiring the respondents to present to the commission within thirty (30) days of the issuance of the cease and desist order, a plan showing precisely and in detail how they will comply with the commission's order that they cease and desist from their policies, practices, customs and usages of discrimination against the complainant and women employees on account of their sex as to compensation, terms, conditions and privileges of employment; and pursuant thereto that the commission order that complainant and every woman with an employment contract with the respondents be paid wages or salary equivalent to that which they would have been receiving had they been men.

3. Grant the complainant a judgment that the policies, practices, customs and usages complained of herein violate the Civil Rights Act of 1964.

4. Reinstate complainant Egelston to her position in the Department of Educational Studies at such pay and rank she would have been entitled to had she been male.

5. Award complainant Egelston back pay in the amount of the difference between the wages she actually earned and the wages she would have earned in the absence of illegal discrimination against her from the latter of her dates of employment by the respondents or the date on which the Civil Rights Act of 1964 took effect.

6. Grant complainant Egelston a cease and desist order enjoining the respondents, their agents, successors, employees, attor

Exhibit 2

neys and those acting in concert with them and at their direction from conditioning, limiting and depriving complainant Egelston from opportunities for promotion because of sex.

7. Direct that complainant Egelston be promoted immediately to the classification that she has been denied by reason of her sex with seniority in such classification dating from the first instance of wrongful failure to place her in such classification.

8. Direct that the respondents publish verbatim the findings and decisions herein on all school bulletin boards and in all internal school publications.

9. Allow complainant her costs herein including reasonable attorneys' fees.

10. Award the complainant damages by way of example against the respondents in an amount commensurate with the wrong and respondents' ability to pay.

11. Award the complainant compensatory damages of $2,000,000 (Two million dollars).

12. Grant such other and further relief as to the commission may seem just and proper.

EMMELYN LOGAN-BALDWIN
Attorney for Complainant
Office and Post Office Address
19 Arnold Park
Rochester, New York 14607

June 14, 1974

Exhibit 2

STATE OF NEW YORK)
COUNTY OF MONROE)
CITY OF ROCHESTER) ss:

JUDY C. EGELSTON, being duly sworn, according to law, deposes and says: that she is the complainant herein; she has read the foregoing complaint and knows the contents therof; that the allegations are true to her own knowledge except as to those allegations which she has stated to be made on information and belief and as to those allegations she believes them to be true.

Judy C. Egelston

JUDY C. EGELSTON

Subscribed and sworn to before me
this 18th day of June, 1974.

Emmelyn Logan-Baldwin

EMMELYN LOGAN-BALDWIN
NOTARY PUBLIC, State of N. Y., Monroe Co.
Commission Expires March 30, 1975

Exhibit 2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE

128

TO:	FROM:
Judy C. Egelston 1362 West Lake Road Conesus, New York 14435	U.S. Equal Employment Opportunity Commissio Buffalo District Office 1 West Genesee Street Buffalo, New York 14202

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:	EEOC REPRESENTATIVE	
☐ NO REASONABLE CAUSE ☐ UNTIMELY CHARGE ☒ NO JURISDICTION ☐ FAILURE TO PROCEED	Lloyd C. Bell	
	TELEPHONE NUMBER (716) 842-5170	CASE/CHARGE NUMBER TBUL 0761

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

LLOYD G. BELL
District D...

No. 677541

RECEI...
SENT TO
STREET A...
P.O. STA...
RETURN RECEIPT SERVICES
DELIVER SPECIAL ...
PS Form Apr. 1971

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)
(Additional charges required for these services).
☒ Show address where delivered
☐ Deliver ONLY to addressee

RECEIPT
Received the numbered article described below

REGISTERED NO.
CERTIFIED NO. 677541
INSURED NO.

1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)
Emmelyn Logan-Baldwin
2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
Marilyn Chase

DATE DELIVERED
7-1-74

3 SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)
19 ARNOLD PK.

Exhibit 2

August 8, 1974

Dr. Judy C. Egelston
1362 West Lake Road
Geneseo, New York 14435

RE: Judy C. Egelston v. State University of New York, Geneseo
Charge No. TEU 4-0751

Dear Dr. Egelston:

The determination issued on June 25, 1974, that your charge was not filed within the time limits required by §706(e) of the Civil Rights Act of 1964 (as amended) has been altered. Pursuant to EEOC Dec. No. 71-1115, the charge you filed with the Office of Contract Compliance on January 24, 1973 is deemed to have been filed with the Equal Employment Opportunity Commission, and therefore was filed within the time limits prescribed by Title VII.

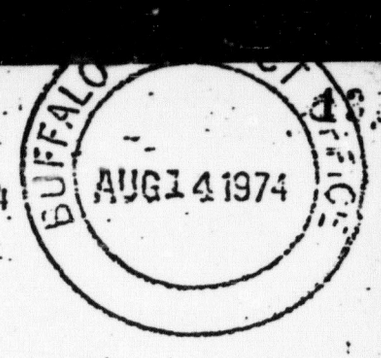
Sincerely yours,

Kenneth M. Davidson
DISTRICT COUNSEL

cc: SUNY, Geneseo
Emmelyn Logan-Baldwin

Exhibit J

August 13, 1974



David Rose, Esquire
Chief, Employment Section
Civil Rights Division
United States Department of Justice
550 Eleventh Street N.W.
Washington, D. C. 20530

Re: Judy C. Egelston v. State University of New York at Geneseo, et al - Charge Number TBU 4-0761

Dear Mr. Rose:

I was recently retained by the complaining party in the above-noted action. Dr. Egelston first filed her complaint of discrimination with the federal government, Office of Federal Contract Compliance, by letter to that agency of January 24, 1973.

On undertaking Dr. Egelston's representation, I, therefore, filed with the Equal Employment Opportunity Commission on or about June 18, 1974, particulars of Dr. Egelston's complaint. The Equal Employment Opportunity Commission first advised incorrectly that the filing was not timely, but, on my pointing out to them that the date of filing relates to Dr. Egelston's first letter to the Office of Federal Contract Compliance, the Commission has acknowledged its jurisdiction. I am enclosing a copy of a recent letter confirming this point from EEOC District Counsel.

District Counsel, however, has advised me that since the complaint is one against a public entity, the Justice Department must issue the Right To Sue Notice. Accordingly, would you please forward to me by return mail, copy to Dr. Egelston, the Right To Sue Notice. I am most anxious that proceedings on Dr. Egelston's complaint not be delayed any further. Because of backlog of investigation in this area, my client cannot look forward to any investigation by the EEOC in a reasonably timely fashion.

Thank you for your consideration.

Very truly yours,

Emmelyn Logan-Baldwin

Exhibit 2

EMMELYN LOGAN-BALDWIN

David Rose, Esquire
Re: Egelston v. State University of New York at Geneseo, et al
Charge Number TBU 4-0761
August 13, 1974
Page Two

ELB:mac
cc: Kenneth Davidson, Esquire ✓
District Counsel
Equal Employment Opportunity Commission
1 West Genesee Street
Buffalo, New York 14202

Dr. Judy C. Egelston
1362 West Lake Road
Conesus, New York 14435

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON

Plaintiff

-v-

STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO

Defendants

SUPPLEMENTAL AFFIRMATION IN SUPPORT OF MOTION TO COMPEL DISCOVERY; AFFIRMATION IN OPPOSITION TO CROSS MOTION TO DISMISS

Civil Action No. 75-9

Emmelyn Logan-Baldwin, under penalties of perjury, affirms the following:

1. I am an attorney at law duly licensed to practice my profession in the State of New York. I am the attorney for the plaintiff in the above-noted action. This affirmation is submitted by me in further support of plaintiff's Notice of Motion to Compel Discovery, dated April 15, 1975 and in opposition to defendants' cross motion to dismiss received May 8, 1975.

2. The motion to compel discovery should be granted because the notices were duly issued pursuant to Federal Rules of Civil Procedure and require production of materials pursuant to the Federal Rules. Defendants' motion to dismiss must be denied since the attack on the jurisdictional basis pursuant to Title VII of the Civil Rights Act of 1964 is without merit. Defendants admit this court has jurisdiction pursuant to the Constitution and 42 U.S.C. 1983.

3. The material in defendants' affidavits with respect to proceedings pending in the New York State Division of Human Rights is irrelevant to a consideration of any question before this court. The case law is clear that a party has a remedy for discrimination in employment both under the New York State Human Rights Law and the federal law, Title VII of the Civil Rights Act of 1964. Those remedies are separate and complete; the plaintiff may pursue a claim under federal law while a discrimination complaint is likewise pending pursuant to the New York State Human Rights Law. There is no basis in fact or law for the observation of the defendants that plaintiff's pursuing her federal and state remedies constitutes "harassment."

4. Defendants admit, in their observations about the New York State action, that they are pursuing a course of dilatory conduct there. Defendants have been unsuccessful to date in quashing efforts by the State of New York and the plaintiff to require the defendants to produce relevant documents.

5. Contrary to what the defendants suggest, all of the material requested in the Notice to Produce must be produced pursuant to the Federal Rules of Civil Procedure.

6. Defendant objects to the production of the personnel record of Richard Egelston. That personnel record must be produced since plaintiff alleges in her complaint that part of the defendants' retaliatory action against her is the non-renewal of his teaching contract and the undertaking, thereafter, by the defendants of activity to "blackball" both the plaintiff and her

husband. The entire personnel records must be produced as requested by the plaintiff, including all confidential letters of recommendation. The credibility of participants in events is directly in issue in this litigation. Plaintiffs are entitled to know the full contents of any document, such as the personnel record, which contains information on one's character and activities.

7. Plaintiff's second request for production, all affirmative action programs of the defendants, together with all background data, supporting data and/or studies made in connection with the same from 1965 to date must be produced. It is common knowledge that affirmative action programs are supplemented, amended, drafted and redrafted from time to time. The affirmative action program is supposed to be an in-depth examination of the defendants' employment practices. Obviously all of this information is directly relevant to plaintiff's claims that those employment practices are illegal.

8. Defendants have asked for clarification of plaintiff's request 3. Advancement experience means that the defendants should provide information on transfer and promotion for the employee. Prior experience means that the defendant should provide information on an employee's work experience. The request relates to length of service at State University College at Geneseo. Information on employees at the library at Geneseo is relevant. Plaintiff claims that defendants maintain a policy, practice, custom and usage of discriminating against women employees wherever employed by State University College at Geneseo. Further, it is plaintiff's information that all of

the data requested in item 3 is available; the information from the years 1970-1973 is available in computer printout form but the information for the other years requested is available by examining other records.

9. Defendants apparently are willing to provide the information requested in item 4. However, the defendants seem to want to qualify the request for materials in item 5 - all written materials relating to the decision not to renew plaintiff's contract. The discriminatory nonrenewal of plaintiff's contract is one of the central issues in this complaint. Obviously, every writing in connection therewith must be produced.

10. With respect to items 7 and 8 of the request, defendants agree to supply materials only from 1970-1973. The request is for the supplying of those materials from 1965 to date. Those materials must be produced for those dates. Plaintiff claims that the discrimination of the defendants against her in terms, conditions and privileges of employment is a pattern and practice of the defendants against all women. She is entitled to show the past as well as present discriminatory acts, policies and practices of the defendants.

11. Defendants equivocate on supplying the information requested in item 13. One of plaintiff's claims is that she was denied teaching opportunities. Plaintiff is entitled to every written document concerning that denial of opportunity.

12. Defendants refuse to produce items 14 and 15 claiming attorney's work product and privilege. The requests relate to production of documents which the defendants used in

allegedly making the decision not to renew plaintiff's teaching contract on a rational basis. The documents referred to which were relied on by the defendants pre-date the institution of any complaint since those documents are allegedly part of the decision-making process leading up to the non-renewal of plaintiff's contract. There is no basis to claim that the documents constitute attorney work products.

13. Defendants object to item 17 claiming that information about the non-renewal of plaintiff's husband's teaching contract is irrelevant. As previously pointed out, part of plaintiff's claim before this court is that defendants' retaliation included not only refusal of the defendants to allow plaintiff to teach but the defendants failure to renew her husband's teaching contract and the subsequent "blackballing" of plaintiff and her spouse by the defendants.

14. In response to plaintiff's request 19, defendants suggest that the information be secured from the Education Department. That is not an appropriate response to a notice to produce. Defendants must produce the documents themselves since apparently they know of the document, have access to a copy and can produce that document.

15. Defendants again equivocate on the request in item 20. All writings concerning the decision to terminate Patrick DeMarte must be produced - not just his personnel record. Defendants have suggested that Mr. DeMarte was more suitable a candidate to be retained on the teaching staff at Geneseo than plaintiff.

16. Defendants equivocate with respect to request no. 21. All the printouts requested are relevant, whether those printouts were made public or not. A central issue in this litigation is the qualificatons, background, experience and performance of plaintiff as compared to other colleagues.

17. Defendants' answer to item 24 is not responsive Whenever the Affirmative Action Committee of the State University College at Geneseo began functioning those writings are germane to plaintiff's basic inquiry into discriminatory employment practices. The documents must be produced.

18. Defendants ask clarification of item 28. Defendants employ members of its Division of Educational Studies in Holcomb School,Geneseo, New York. Plaintiff's request is that defendants produce the documents describing the purpose of the Holcomb School program, that the defendants produce the document explaining the programs and that the defendants produce the document setting forth the background and qualifications of personnel employed there. Both plaintiff and other persons with whom her performance has been compared have worked in the Holcomb School.

19. The defendant equivocates on production of the item requested in no. 29. It is not relevant whether the Register is a student newspaper or not. The defendants ought have a copy of that newspaper in their library and, assuming that such copy is in their control, that copy must be produced.

20. Defendant equivocates on the production of items requested in no. 35. Plaintiff's information is that a member of the staff of the defendant college presented the

statistics. In some sense, therefore, the defendants did participate in this event and furnished information on the defendants enployment practices.

21. Defendants also equivocate on the request in item 40. Defendants admit that there were responses. Plaintiff is entitled to see those responses. Whether the ad was erroneously placed as the defendants assert is to be determined from all circumstances after seeing all documents.

22. Defendants equivocate on plaintiff's requests in items 42 and 43. All work of the Affirmative Action Committee undertaken at whatever point in time must be produced. Plaintiff is entitled to evidence on all employment practices of the defendants both prior to her employment and subsequent to her employment. The plaintiff claims that the defendants engage in a pattern, practice, custom and usage of discriminating against females of which she was one of the victims.

23. There is no merit to defendants' contention that discovery ought be delayed until this court reaches decision on defendants' motion to dismiss. Defendants concede in their papers that this court has jurisdiction pursuant to 42 U.S.C. 1983. Defendants also fail to point out or even discuss the court's independant jurisdiction of the equal protection claims of the Fourteenth Amendment. There is jurisdiction over all of the defendants. Plaintiff's claims are the same regardless of whether we are talking about jurisdiction under 1983, the Constitution, or the Civil Rights Act of 1964. The scope of discovery is the same regardless of which jurisdictional basis is asserted.

24. As previously noted, plaintiff having brought claims of employment discrimination against the defendants before the New York State Division of Human Rights is no basis for this court to dismiss and/or delay the claims brought pursuant to federal law. The federal and state remedies are separate, apart and may be pursued independently of each other.

25. Nor is there any merit to defendants' claim that plaintiff did not file her claims of discrimination under Title VII of the Civil Rights Act of 1964 properly. Plaintiff has always made claim that the defendants maintain a policy, practice, custom and usage of discriminating against females and that she is a member of that class of persons who have suffered. Defendants make a distinction without any difference in trying to characterize complainant's complaint in one instance as a "class" complaint and in another instance as a "individual" complaint. Case after case in which courts have discussed employment discrimination litigation hold that employment discrimination by definition is class discrimination, however, one might characterize the action or pleading. This complaint before this court as well as all of plaintiff's complaints have been pattern and practice, class complaints.

26. Plaintiff was not until recently represented by a lawyer. It is true that her original complaint is not artfully drafted. However, it is clear that that complaint sets forth the substance of her claim against the defendants. Claims filed pursuant to Title VII of the Civil Rights Act of 1964 are liberally construed. Under the case law and decisions of the Equal Employment Opportunity Commission, plaintiff's complaint

is sufficient as a matter of law. Moreover, once plaintiff had counsel, she filed a detailed statement of particulars of that complaint. There is simply no basis for the defendants to suggest that they have not been adequately notified of the charges.

27. Defendants are incorrect in suggesting that plaintiff need file her complaint within 180 days of the occurrence of the incident. The law provides that where a state anti-discriminatory agency is available, the perfecting period is 300 days from the alleged discriminatory activity. Plaintiff not only met that requirement in a strict sense but the date of the accrual of the action would be continuing after May 15, 1972 since defendants continued that discrimination by continually rebuffing thereafter plaintiff's efforts to seek reversal of the decision and continue her employment.

28. For these reasons, plaintiff requests that the court grant her motion to compel disclosure and deny defendants' motion to dismiss.

Emmelyn Logan-Baldwin

May 9, 1975
Rochester, New York

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Supplemental Affirmation in Support of Motion to Compel Discovery; Affirmation in Opposition to Cross Motion to Dismiss was served on the defendants by my causing a copy thereof to be delivered to the offices of the Attorney General of the State of New York, 300 Terminal Building, Rochester, New York on May 12, 1975 and my causing a courtesy copy to be mailed to Kenneth J. Connolly, Esquire, Office of the Attorney General, State of New York, The Capital, Albany, New York 12224 May 9, 1975.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
510 Powers Building
Rochester, New York 14614
Tele.: 716/232-2292

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

142

JUDY C. EGELSTON,

Plaintiff,

v.

STATE UNIVERSITY COLLEGE AT GENESEO, et al.,

Defendants.

CIVIL ACTION
NO. 75-9

MOTION OF THE UNITED STATES
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE

The United States Equal Employment Opportunity Commission moves this Court for leave to participate herein as amicus curiae.

The Commission is the agency established by Congress to administer, interpret and enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (Supp. II, 1972). The issue raised in this case - whether the filing of a complaint with the Office of Federal Contract Compliance is equivalent to the filing of a charge with the Equal Employment Opportunity Commission - involves an important question of public policy. It is therefore in the public interest that the Commission be permitted to present its views.

Wherefore, the Commission respectfully requests leave to participate herein as amicus curiae.

Respectfully submitted,

JULIA P. COOPER
Acting General Counsel

JOSEPH T. EDDINS
Associate General Counsel

BEATRICE ROSENBERG
CHARLES REISCHEL
LUTZ ALEXANDER PRAGER

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IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON,

Plaintiff,

v.

STATE UNIVERSITY COLLEGE AT GENESEO, et al.,

Defendant.

CIVIL ACTION
No. 75-9

ORDER

The United States Equal Employment Opportunity Commission's motion to participate as Amicus Curiae is hereby granted.

DATED

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify, that a copy of the foregoing motion and proposed order were today mailed to the following counsel of record:

Kenneth J. Connolly
Louis J. Lefkowitz
Attorney Generals Office
for the State of New York
The Capitol
Albany, New York 12224

Emmelyn Logan-Baldwin
510 Powers Building
Rochester, New York 14614

June 5, 1975

John Schmelzer

JOHN SCHMELZER
Attorney

Equal Employment Opportunity
Commission
2401 E Street N.W.
Washington, D.C. 20506

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON,

Plaintiff

- vs - CIVIL 75-9

STATE UNIVERSITY COLLEGE AT GENESEO;
STATE UNIVERSITY COLLEGE OF ARTS AND
SCIENCES, DIVISION OF EDUCATIONAL STUDIES,
STATE UNIVERSITY COLLEGE AT GENESEO;
THOMAS COLAHAN, VICE-PRESIDENT FOR ACADEMIC
AFFAIRS, STATE UNIVERSITY COLLEGE AT GENESEO;
NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES,
STATE UNIVERSITY COLLEGE AT GENESEO, GENESEO,
NEW YORK,

Defendants

Emmelyn S. Logan-Baldwin
510 Powers Building
Rochester, N.Y. 14614
Attorney for plaintiff

Louis J. Lefkowitz
Attorney General of New York
The Capitol
Albany, N.Y. 12224
(Kenneth J. Connolly, of counsel)
Attorney for defendants

By cross motion filed May 12, 1975 the defendants moved to dismiss the complaint on the grounds that this court lacks jurisdiction over the persons of the defendants and lacks jurisdiction over the subject matter of the action and that the complaint fails to state a claim upon which relief can be granted.

Plaintiff was employed as an Assistant Professor in the Department of Educational Studies at State University College at Geneseo, New York, commencing in 1970. On or about May 15, 1972 plaintiff received notice that her contract, expiring in June 1973, would not be renewed.

The complaint herein was filed January 6, 1975. The plaintiff has not complied with the time limitations contained in 42 U.S.C. 2000(e)5. In the circumstances of this case the statute requires filing within 180 days after the alleged unlawful employment practice occurred.

The defendant State University of New York, College of Arts and Sciences, is a corporate agency within the Education Department created to carry out governmental functions of the State in higher education. It is an alter ego of the State and immune from suit, except to the extent that the State has waived its immunity. The State of New York is the real party defendant. The State is not a "person" within the meaning of 42 U.S.C. 1983. Monroe vs. Pope, 365 U.S. 167.

The individual defendants are sued in their representative capacities as agents of the State of New York. The plaintiff has an adequate remedy under State law which is presently being pursued. There is no reason for this

court to entertain jurisdiction under 42 U.S.C. 1983 and 28 U.S.C. 1343.

The motion to dismiss the complaint against State University College at Geneseo; State University College of Arts and Sciences, Division of Education Studies, State University College at Geneseo, is granted. In the exercise of discretion the action against the individual defendants is dismissed.

ALL OF THE ABOVE IS SO ORDERED.

HAROLD P. BURKE
United States District Judge

December 31, 1975.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JUDY C. EGELSTON,

Plaintiff,

-vs-

STATE UNIVERSITY COLLEGE AT GENESEO; STATE UNIVERSITY COLLEGE OF ARTS AND SCIENCES, DIVISION OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO; THOMAS COLAHAN, VICE PRESIDENT FOR ACADEMIC AFFIRS, STATE UNIVERSITY COLLEGE AT GENESEO; NICK LAGATTUTA, DEAN OF EDUCATIONAL STUDIES, STATE UNIVERSITY COLLEGE AT GENESEO, GENESEO, NEW YORK,

Defendants.

NOTICE OF APPEAL

Civil Action No. 75-9

Plaintiff, Judy C. Egelston, hereby appeals from the order and decision of the Honorable Harold P. Burke, dated December 31, 1975, dismissing the complaint against all defendants. Plaintiff appeals on the facts and the law and from each and every part of said decision, order and judgment.

Emmelyn Logan-Baldwin
Attorney for Plaintiff
Office and P.O. Address:
510 Powers Building
Rochester, New York 14614
Telephone: 716-232-2292

January 23, 1976

CERTIFICATE OF SERVICE

I hereby certify that that the foregoing joint appendix was served on the defendants-appellees by my causing a copy thereof to be mailed to Louis J. Lefkowitz, Attorney General of the State of New York, Kenneth J. Connolly, Esq., of Counsel, The Capitol, Albany, New York 12223, this 2nd day of April, 1976.

Emmelyn Logan-Baldwin

Emmelyn Logan-Baldwin
Attorney for Plaintiff-Appellant
Office and P.O. Address:
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Rochester, New York 14614

April 2, 1976

BEST COPY AVAILABLE